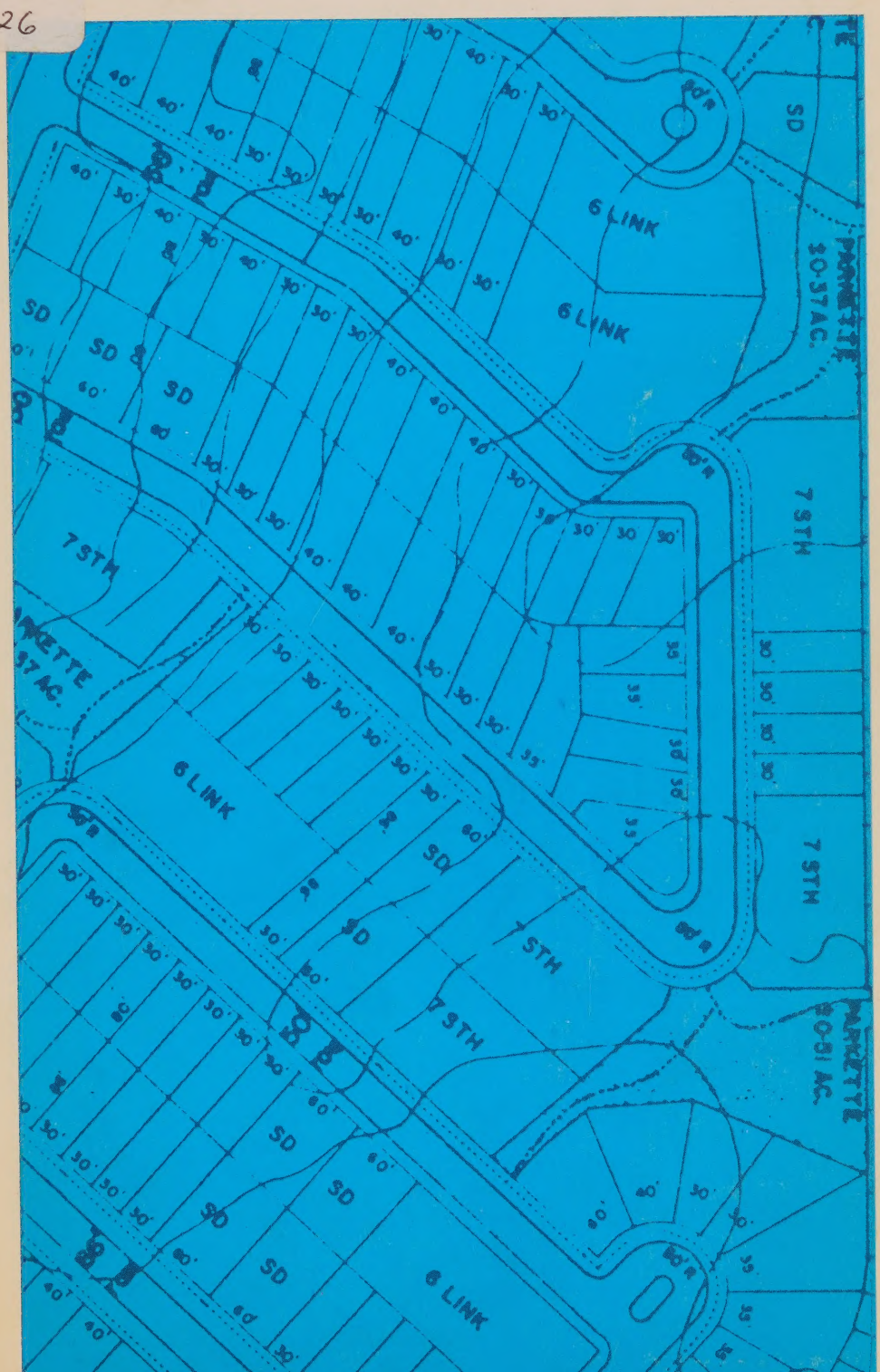
Report of the Planning Act Review Committee



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Report of the Planning Act Review Committee

APRIL 1977

Ontario

Planning Act
Review
Committee

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April 29, 1977

The Honourable John R. Rhodes
Minister of Housing
4th Floor, Hearst Block
Queen's Park, Toronto
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Dear Mr. Rhodes:

We are submitting our review of The Planning Act for your consideration.

In carrying out the work we received comments and suggestions from a great number of individuals and organizations. We want to acknowledge particularly the cooperation we received from municipal officials and municipal bodies throughout the Province, including municipal councils, planning boards, school boards, committees of adjustment, land division committees and conservation authorities.

The list of persons and organizations that submitted comments or met with the committee is included in Background Paper 1, which describes the public consultation program, and in Background Paper 2, which deals with our survey of selected municipal planning operations.

We also appreciate the cooperation we had from many provincial ministries and officials. We note particularly the work of a committee of Ministry of Housing officials under the chairmanship of Mr. G. K. Bain, and an interministerial committee chaired by Mr. W. Wronski.

Finally, we want to express our deep appreciation of the contribution by Professor Dennis Hefferon, the review counsel, Mr. Gerald Fitzpatrick of your ministry, who served as the manager of the review, and the staff of the Local Planning Policy Branch of the Ministry of Housing.

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SUMMARY OF MAJOR PROPOSALS

Provincial responsibility for municipal planning

1 The provincial interest in municipal planning should be formally defined to comprise:

- Implementation of provincial policies and programs in economic, social and physical development; protection of the natural environment and management of natural resources; and the equitable distribution of social and economic resources.
- Maintenance of the provincial financial well-being.
- Ensuring civil rights and natural justice in the administration of municipal planning.
- Ensuring coordination of planning activities of municipalities and other public bodies, and resolving intermunicipal planning conflicts.

2 The Province should not be concerned with whether municipalities engage in "good planning", but only in whether their planning actions adversely affect the defined provincial interests. Good planning should be considered a matter of local norms and standards, to be left to the municipality and its inhabitants to settle for themselves.

3 The Province should cease to be responsible for supervising and approving all municipal planning actions, but should instead have the authority to veto those municipal planning actions which conflict with defined provincial interests. Provincial veto actions should be carried out only in a formal authoritative manner, with reasons stated. The provincial veto should be exercised by the Minister of Housing in matters under his jurisdiction, and by the Cabinet in matters concerning the interests of other ministries.

4 To ensure that provincial interests in rural land are adequately secured, the Minister should establish a universal base-level rural zoning by-law, setting minimum standards for rural development, and a universal base-level rural consent policy. The Minister should have the power to exempt from the rural zoning by-law and consent policy those municipalities that already have adequate by-laws or consent policies, that adopt such by-laws or policies in the future, or where such by-laws and policies are not necessary or appropriate for particular reasons.

5 In those matters where the Minister exercises discretionary authority under the Act, he should to the greatest possible extent exercise this authority by means of regulations or other statutory orders.

6 The establishment of facilities for the administration of provincial programs, in which the location of the facility is not a matter of direct provincial policy, should come under the jurisdiction of municipal planning controls. Provincial facilities that are location-specific for policy reasons, such as for example correctional institutions or transportation facilities, should remain exempt from municipal planning control, but the Province should be required to consult the municipality concerned prior to their establishment so that they can be taken into account in the municipality's planning program.

Municipal planning responsibility

7 Municipal councils should be assigned the final authority over all their own planning instruments (municipal plans, zoning by-laws, development review, subdivision plans, land separation consents, and redevelopment of neighbourhood improvement plans), subject to appeal procedures and provincial veto. The Minister should have the power to withhold this authority, for stated reasons, from those municipalities in which he considers autonomous planning authority to be inadvisable from a provincial standpoint.

8 The concept of defined "planning areas" should be abandoned, and planning authority under the Act should be assigned directly to municipal councils. The concept of joint planning areas should be abandoned, and intermunicipal planning coordination should be provided for through the establishment of voluntary joint planning committees composed of municipal council representatives. Formal area-wide planning authority should be exercised only by county and regional councils. Provision should be made for the establishment of inter-regional planning committees, in the greater Toronto-Hamilton area to begin with and in other areas as appropriate.

9 Municipal planning authority should rest in the first instance with the elected municipal council, which should have the power to delegate authority within limited circumstances to council committees or to appointed committees

(for land separation consents and minor zoning adjustments only). Councils should be empowered to delegate to appointed officials the authority to make only those planning decisions which fall within established council policies. The delegation of any planning powers by a municipal council should be conditional on the adoption of a formal policy outlining the scope of the delegated powers, the procedures for appealing decisions to the council, and procedures for recalling the delegated powers.

10 All municipal councils, including lower and upper-tier councils in the regional municipalities, should have the authority to appoint or not appoint planning boards, or to dissolve their existing planning boards, at their own discretion. Councils should be free to establish the composition of their planning boards, their methods of operation and the scope of their duties, but should not have the power to assign to their planning board any statutory planning authority or the authority to hold public hearings. The present "two-thirds" provision of Section 17(2) of *The Planning Act* should be deleted.

11 Municipalities with planning statements concerning the natural environment that are satisfactory to the Minister of the Environment should be assigned the authority for environmental assessment of major private undertakings under *The Environmental Assessment Act*.

12 The authority to approve urban subdivisions and consents should rest with local municipalities, and the authority to approve rural subdivisions and consents should rest with the counties or regional municipalities. The determination of which specific areas or municipalities are urban and which are rural for this purpose should be made in each case by the county or regional council, subject to appeal to the Minister (except for those municipalities in Ottawa-Carleton and Metropolitan Toronto where consent authority is now being exercised locally).

13 Municipal councils should have the authority to grant consents directly if they choose, rather than through appointed committees of adjustment or land division committees. Where committees continue to exercise consent powers, they should be required to adhere to their council's (or the Minister's) consent policies. Councils should have the authority to vary their committees' consent decisions, subject to stipulated appeal procedures.

14 The planning powers common to all upper-tier municipalities (regional municipalities and restructured counties) should be provided for in *The Planning Act*, and any specific variations in the distribution of planning authority between upper and lower-tier councils should be provided for in the individual regional government acts, including the determination of which municipalities are to have the authority to approve subdivision plans and consents.

15 The scope of regional planning should be defined to include the region's responsibility for the area-wide development pattern and structure, the regional economy and natural resource base, and the planning aspects of the regional municipality's statutory responsibilities. Any additional matters of regional planning concern should be established only through amendment of the individual regional government acts.

16 Whether local municipalities engage in "good planning" should be placed outside the scope of regional planning responsibility. The Act should also provide that the suitability of local planning procedures, the resolution of planning grievances, and the settling of disputes between local municipalities are of provincial rather than regional concern (though provincial intervention in intermunicipal disputes should not take place unless the matter had not been satisfactorily dealt with at the regional level first).

17 Regional intervention in local planning should be limited to matters of direct regional planning concern. It should take the form of regional objection to local proposals and planning decisions that are not consistent with stated regional interests. Regional councils should not have the power to approve local plans or other local planning decisions, except for those municipalities where the region exercises consent or subdivision approval power. Local planning decisions (that are not otherwise appealed or vetoed by the Province) should take effect unless formally objected to by the region within a stipulated time period, on the basis of a formally adopted regional policy. Regional objections to local planning decisions or proposals should be resolved by the Minister, with a hearing by the Ontario Municipal Board if appropriate.

18 There should be no direct regional or county zoning or development review authority (except in those upper-tier municipalities which already have zoning powers under their own acts), but regional and county councils should have the power to set maximum area-wide development standards and speci-

fications. Regional councils should also have the power to request amendments to local plans and zoning by-laws concerning matters of direct regional concern, and should be authorized to be direct parties to subdivision, zoning and development review agreements.

Municipal plans

19 The adoption of municipal plans should not be made mandatory, but municipalities should not be allowed to exercise any statutory planning authority (zoning, development review, subdivision approval, consent approval, redevelopment or neighbourhood improvement planning) without a formally adopted planning policy that establishes the basis for that particular planning activity. Municipalities should be authorized to adopt total comprehensive plans in the conventional sense, or individual planning policy statements relating to the specific planning activities in which they are engaged.

20 The concept of "official plans", in the sense of municipal plans requiring provincial approval, should be abandoned. Municipal planning documents should be renamed "municipal plans" and "municipal planning statements".

21 There should be no mandatory prescribed content for municipal plans, but all municipal plans and planning statements should be required to establish the particular objectives being sought, the means to be used for achieving these objectives, and the procedures to be used for periodic review and for public information and consultation. Municipal councils should be required to have regard for social, economic and natural environment concerns in their plans and planning statements, and to take account of the likely social, economic and environmental consequences of their proposed planning actions.

22 Section 19, providing "legal status" to the official plan, should be deleted from the Act. Municipal councils and all municipal bodies, including all local boards and committees, should be required instead to have regard for the adopted municipal planning policies in all of their actions.

23 Municipal councils should be required to formally review their adopted plans and planning statements at least once in the lifetime of each council, according to stipulated specifications.

Public involvement and planning process requirements

24 The requirements for general public involvement in the formulation of municipal plans should not be specified in the Act, but should be determined by each municipality in a formal planning policy statement that is subject to appeal and provincial veto.

25 The Act should provide that all potentially affected parties have the right to be notified of all municipal planning proposals, to present their views or object to such proposals, and to appeal municipal planning decisions. It should require that there be public notification and formal hearings on all statutory planning actions: municipal plans and planning statements, subdivision plans and consent applications, zoning by-laws and amendments, and redevelopment and neighbourhood improvement plans. The Minister should be required to prescribe by regulation the procedures to be used for public notification.

26 All written material that is provided to the municipal council for its consideration in dealing with planning proposals should be available for public examination. The municipal clerk should be required to prepare a formal record of the council's actions on every planning decision, including a summary of the written and oral reports and submissions made to the council, for use in any subsequent appeal proceedings.

27 Members of ratepayer groups and other voluntary associations should have formal rights to be notified of municipal planning proposals and to participate in public meetings and hearings, and in appeal proceedings.

The Ontario Municipal Board

28 The Ontario Municipal Board should serve as an appeal body with respect to municipal planning decisions, and should not conduct hearings *de novo.* It should be responsible for hearing the grievances of parties affected by municipal planning decisions. The Board should not be responsible for determining provincial policy or the planning merits of any matter placed before it. It should not have the responsibility for making final decisions on municipal

planning matters, but instead should conduct hearings and make recommendations to the Minister or the municipal council, depending on the circumstances.

29 The Board should hear appeals from parties who object to a council's decision, or failure to reach a decision, only on the ground that the council's behaviour was unfair or unreasonable, or that the council acted or failed to act on the basis of information or advice that was incorrect or inadequate. Where the Board finds that a council's behaviour was unfair or unreasonable, its findings and recommendations should be submitted to the Minister, who would have the authority to confirm, alter, or veto the council decision for stated reasons. Where the Board finds that a council acted on the basis of incorrect or inadequate information or advice, it should return the matter to the council for reconsideration, on the basis of the Board's findings as to the correct or adequate information that should be considered by the council in reaching a decision.

30 If the present provision is retained in the Act for the Minister to approve official plans and subdivision plans, and to refer such matters on request to the Ontario Municipal Board, the Board's responsibility should be to hold a hearing on the matter and submit its findings and recommendations to the Minister (or to a council exercising delegated subdivision approval powers) for a decision.

31 If municipal councils are given the authority to vary the consent decisions of committees of adjustment and land division committees, the Board should continue to hear appeals from these decisions, whether by the committee or by the council. Where its findings and recommendations are not accepted by a council, there should be a right of further appeal to the Minister without an additional Board hearing.

32 To assist the Board and the Minister in screening out frivolous or trivial appeals or requests for referral, the Act should require that all such requests and appeals be accompanied by written reasons.

33 The Board should be responsible, on request by the Minister, for hearing planning disputes between municipalities, including disputes between local and regional municipalities, and should submit its findings and recommenda-

tions to the Minister for a decision in such cases. It should also continue to hear appeals on Minister's Section 32 zoning orders and Minister's consent decisions, and in these cases should also submit its findings and recommendations to the Minister for a decision.

34 If the Board continues to have the power to make final decisions on municipal planning matters, the procedures for petitioning the Cabinet to review these decisions should be spelled out in regulations; these should include a stipulated time period within which petitions must be dealt with, failing which a petition will be deemed to have been granted. The Act should require that reasons be given for a Cabinet decision, and should stipulate the grounds on which a Municipal Board decision on a municipal planning matter can be altered by the Cabinet. (These are listed in the report.)

Development control

35 The present system of development control through land use zoning should not be replaced by a system of development permits, either universally or on a partial basis in areas undergoing new development or redevelopment. Instead there should be improvements in the use of development review and interim and holding controls, as well as other zoning improvements. These will help to provide property owners and the public with greater certainty and will enhance the municipal ability to achieve planning objectives through zoning.

36 Municipalities should have the power to adopt interim control by-laws which have the effect of freezing development in given areas while the council undertakes a review of the zoning and development policies for those areas. Such by-laws should have a one-year duration, with provision for extension for an additional year, and should be authorized on the basis of stipulated conditions described in the report, including the normal requirements of notice, public hearing and appeal.

37 Municipalities should also have the power to enact holding by-laws for rural land that is being converted to urban use, and for properties (such as environmentally sensitive sites or sites with unique design requirements) for which it is not feasible to determine the impact of development in advance of specific

development proposals. The authority to enact holding by-laws should be based on the adoption of planning statements setting out the objectives of such by-laws and the basis for their administration, including the criteria to be used for permitting site-specific amendments. The supporting planning statements and the holding by-laws should be subject to the normal requirements of notice, public hearing and appeal.

38 The scope of development review under Section 35a of the Act should be broadened and made less particular, but should not be extended to include such matters as height, density and use. The exercise of development review powers should require the adoption of a planning statement setting out the objectives and principles to be employed in carrying out development review, and a development review by-law setting out the criteria to be used for the review of individual proposals. Municipalities should be allowed to exempt from development review particular classes of development, such as assisted housing or senior citizens' housing. The supporting planning statement and the development review by-law should be subject to the normal requirements of notice, public hearing, and appeal. Municipalities should also be authorized to issue outline decisions, or decisions in principle, for complex development proposals, as a basis for the preparation of detailed design plans requiring final approval.

39 Other zoning improvements should be instituted, including explicit authority for municipalities to enact temporary use by-laws and to use incentive zoning mechanisms, such as bonus zoning and the transfer of development rights. The use of zoning agreements should also be explicitly permitted. Municipalities should be required to examine the basis and appropriateness of their existing zoning by-laws at least once every five years, in order to curtail the use of obsolete zoning as a way to control development on a site-by-site basis.

Subdivision approval and consents

40 The present system of subdivision control through the approval of subdivision plans and land separation consents should not be replaced by a system of subdivision development permits, but improvements should be instituted in order to reduce the fragmentation of approval responsibility and the use of discretionary approval powers, and to increase the level of public accountability in the system.

41 The Minister should establish by regulation the public agencies that are to be consulted in the consideration of subdivision plans, and deadlines for the receipt of comments from these agencies. The present requirement that the Minister settle a draft subdivision plan that meets "all requirements" of the agencies consulted should be changed. Instead, the Act should require that in dealing with subdivision plans the approving authority (the Minister or a municipal council with subdivision approval powers) is to have regard for the comments of the agencies that were consulted.

42 The Act should be amended to stipulate the matters to be covered in draft subdivision plan approval (as listed in the report), and to define draft approval as constituting a degree of approval in principle sufficiently firm for the subdivider to undertake detailed surveying and engineering design. Where draft approval is given "subject to the approval" of other agencies, the Minister or municipal council should be required to stipulate the criteria or specifications to be used by the agency concerned in determining compliance, rather than leaving the judgment as to compliance entirely to the discretion of that agency.

43 Instead of allowing the Minister or the approving municipality to set conditions for subdivision approval that they consider to be "advisable" (as the Act now provides), the permissible scope of subdivision approval conditions and subdivision agreements should be restricted to matters that are reasonably related to the development of the given subdivision.

44 The various matters to which regard is to be given in considering subdivision plans (under Section 33(4) of the Act) should be rationalized and redefined as described in the report. The Act should require the approving authority to establish the criteria or specifications to be used in considering these various matters, and to state the specific reasons for which a given subdivision plan is refused approval on the basis of any of these matters.

45 Municipalities should be allowed to secure parkland dedications in residential subdivision plans on the basis of 1 acre per 120 dwelling units (as an alternative to 5% of the land area) only if they have adopted a formal planning statement establishing the basis for the higher requirement and the park development program in which the dedicated parklands will be used. A municipality should be authorized to secure parkland dedications in industrial and

commercial subdivisions only if it has adopted a formal planning statement establishing the basis for requiring industrial or commercial parkland and the park development program in which the dedicated parklands will be used. The Minister should establish by regulations the maximum amount of parkland dedications that municipalities may require in industrial and commercial subdivisions. Municipalities with appropriate supporting planning policy statements should be authorized to *require* the payment of cash in lieu of dedicated parkland, rather than being allowed only to *accept* such payments, as is now the case.

46 Committees of adjustment and land division committees should be authorized to grant consents for the separation of land where they conclude that a registered plan of subdivision is not necessary for the proper and orderly development of the land in question, rather than for the proper and orderly development of the municipality, as the Act now provides.

47 So as to extend the range of property transactions that are exempt from subdivision control, particularly in urban areas, universal part-lot control should cease to be in effect as of a given date. Municipalities and the Minister should be authorized to institute part-lot control on defined blocks in new subdivision plans and in defined geographic areas, subject to the normal process requirements of notice, hearing and appeal.

Development standards and requirements

48 The Minister should be required to establish, through regulations, the range of development standards and requirements that can be incorporated in municipal planning instruments and imposed on development and subdivision proposals. On the basis of established health, safety and amenity needs, he should be required to set an upper limit on the minimum lot and floor area and a lower limit on the maximum density to be established in major areas of new development, and the maximum servicing requirements and engineering standards that can be imposed in such areas. The Minister should be authorized to alter these standards and specifications at the request of a municipality, for stated reasons.

49 To secure consistency within broad housing market areas, the authority for setting permissible development standards and requirements should be dele-

gated to those regional and county councils requesting this power. The Minister should be allowed to recall this authority where he finds this advisable for stated reasons. He should be responsible for ensuring reasonable consistency in the development standards employed in neighbouring regions, and in neighbouring municipalities where the standards are not set by the regional or county council.

50 Municipalities should be allowed to impose only those financial levies which relate "fairly and reasonably" to the particular development involved. Levies should be purpose-specific only, rather than general. Developers and subdividers should not be required to pay for the capital cost of physical works beyond what is required to bring the site or subdivision to a condition suitable for the proposed occupancy.

51 Municipalities should not be allowed to engage in exclusionary zoning or planning practices that have the effect of keeping certain kinds of people from living in particular sections of the municipality. In particular, the Act should outlaw zoning practices which serve to restrict the persons allowed to live in a given dwelling on the basis of age, marital or family status, source of income, life style or any other personal characteristic.

52 Municipalities should also be constrained from employing planning or development practices that impair the achievement of provincial or regional housing goals. The Ministry or regions with delegated approval powers should be required to monitor the cumulative impact which the specific development standards in effect in an area have on the implementation of provincial or regional housing policies for that area.

53 The Minister should establish by regulation the maximum fees that can be charged for processing zoning by-laws and development review applications, subdivision plans, official plan amendments, and applications for consents and zoning variances. He should be authorized to vary the prescribed fees at the request of a municipal council, for stated reasons. Until such regulations are established, applicants should have the right to appeal application fees, with the Ontario Municipal Board holding a hearing and submitting its recommendation to the Minister for his decision.

54 The present maximum fee of $50 for consent and variance applications should be deleted from the Act. As an interim measure, until a comprehensive fee schedule is established, the Minister should prescribe by regulation a maximum fee of $100 for such applications. He should be authorized to vary this fee, for stated reasons, at the request of a municipal council.

Compensation and reservation of land for public use

55 The present powers of municipalities to impose controls on the use of private property, including downzoning, without being liable for compensation, should remain in effect. In order to achieve particular planning objectives, municipalities should also have the power to purchase the development rights of properties with unique architectural, historic, or natural environment significance. This power should be given to all municipalities that have adopted a formal planning statement setting out their objectives and the criteria and specifications to be used to designate particular properties and to acquire their development rights. The power should be available to both upper and lower-tier municipalities in a two-tier government structure.

56 Municipalities should have the authority to reserve sites for future public purposes by zoning properly identified private lands for public uses for a maximum period of three years, conditional on the adoption of a formal planning statement outlining the criteria to be used in identifying sites for various kinds of public use and the acquisition programs for these sites. The zoning should provide an alternative private use that would automatically come into force at the end of the three-year period, or earlier if it is decided not to acquire the property. It should be mandatory that both the proposed public use and the alternative private use be posted publicly on the site.

57 The Planning Act should stipulate that the price of land to be conveyed for public purposes by way of a zoning or subdivision agreement is to be based on its value immediately prior to the date the zoning by-law is enacted or the subdivision plan is given draft approval. Where a municipality is securing cash payments in lieu of park dedication in a subdivision, the Act should stipulate that the payments are to be based on the value of the subdivision lands immediately after the date of draft plan approval.

Planning in northern Ontario

58 Conventional planning instruments should continue to be used in incorporated municipalities in northern Ontario. Unincorporated permanent settlement areas should be designated by the ministries concerned (Natural Resources, Treasury and Housing), in consultation with the local residents. Planning controls for these permanent settlement areas, to be administered under the jurisdiction of the Minister of Housing, should be separated out from the planning controls used in crown land resource areas, under the jurisdiction of the Minister of Natural Resources.

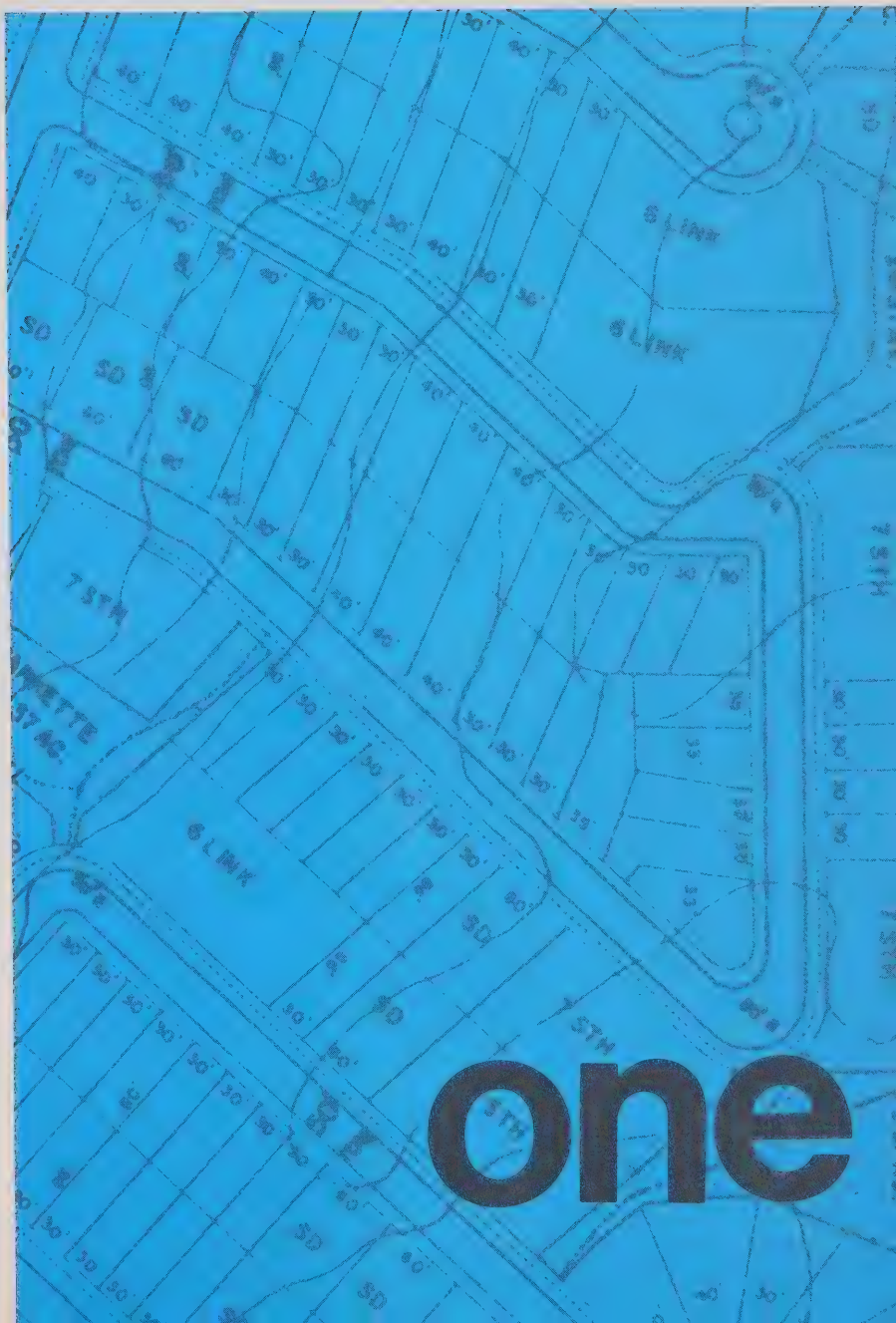
59 The Ministry of Natural Resources should continue to administer development control in crown land resource areas through the use of Section 17 orders and development permits. These orders should be improved by providing appeal procedures and stronger enforcement provisions, and by other improvements noted in the report.

60 As an initial step, the Housing Minister's zoning orders under Section 32 of The Planning Act should be extended to cover all of the designated permanent settlement areas. A Planning Advisory Committee consisting of local residents should be appointed (and ultimately elected) to prepare local planning guidelines for each settlement area within a specified time period (say 18 months). On adoption of the planning guidelines by the local committee and approval by the Minister, the Minister should establish a new statutory Development Control Order which authorizes the local committee to grant development control permits similar to the Section 17 permits used in resource areas. There should be provision for appeal to the Ontario Municipal Board on the same basis as other appeals under the Act.

61 On the election of Planning Committees as proposed in the report, they should be given the power to grant consents that is now available to elected district land division committees under the Act.

62 The Committee's proposal for a development permit system is seen as an interim means of bringing local resources into the administration of basic planning controls, as a transition to full local planning in a conventional local government framework. There should be an immediate review of planning, development and servicing standards used in the north to provide a rational basis for this transition.

introduction



1 history and background

1.1 The Ontario Planning Act has been in place for about thirty years. It was originally enacted in 1946 and has been amended many times. Most of the amendments were designed to deal with legal or administrative problems that arose from time to time. Though there have also been a number of major consequential changes to the Act since 1946, the original elements are still largely in place, and the Act today provides essentially the same basic machinery for municipal planning as it did thirty years ago.

1.2 The fundamental characteristics of the municipal planning system as it is established in *The Planning Act* can be summarized as follows:

- Municipal planning is permissive, not mandatory (except in the restructured municipalities established in recent years).
- The basic unit for municipal planning is a defined planning area that is usually coterminous with municipal boundaries. Provision is also made for joint planning areas. Municipalities may become defined planning areas only by provincial order.
- The municipal plan is a statutory official plan which requires provincial approval to have effect. Statutory official plans can be adopted only for defined planning areas.
- Appointed planning boards, rather than municipal councils, are responsible for preparing official plans (except in the restructured municipalities).
- Municipal by-laws and municipal works, including the works of local boards, must conform to the official plan.
- An approved official plan is a prerequisite for some municipal planning actions, but not all. It is not necessary to have an official plan to exercise zoning powers or process subdivision plans.
- Municipal land use zoning cannot take place without provincial approval.
- Subdivision of land cannot take place without provincial approval (except for the severance of individual land parcels, which must be consented to by appointed municipal committees).
- The Act also gives municipalities powers in other areas, including redevelopment, property standards, and demolition control.
- Appeals from municipal planning decisions are heard by the Ontario Municipal Board. The Board's decisions can be appealed to the Cabinet.

1.3 Though the changes instituted over the years have facilitated the operation of municipal planning under the Act, there has been increasing concern with some of the basic structural elements of the system, particularly the develop-

ment control machinery, the official plan, and the division of responsibility between the Province and the municipalities. Over the past ten years a number of studies and investigations have dealt directly or indirectly with these questions. The studies that were particularly relevant were those carried out by the Ontario Law Reform Commission from 1967 to 1971, the Select Committee on the Ontario Municipal Board (1972), the Ontario Economic Council (1973), and, in a limited way, the Ontario Advisory Task Force on Housing Policy (1973).

Ontario Law Reform Commission

1.4 The Ontario Law Reform Commission's studies of municipal planning legislation comprised three separate reports.* Professor J. B. Milner's initial report, in 1967, was the first reasonably comprehensive examination of municipal planning under the Act. The report looked mainly at the provincial and municipal planning roles, the nature and legal effect of official plans, land use control mechanisms, urban renewal, and the economic consequences of planning and development. Among Professor Milner's main recommendations were: 1) The Province should undertake explicit provincial planning. 2) Regional planning councils should be formed to replace the existing joint planning areas. 3) The power to approve subdivision plans and land separation consents should be delegated to local municipalities. 4) Municipalities should be required to adopt official plans as a condition for exercising land use control powers. 5) A development permit system of land use control should be instituted.

1.5 The Law Reform Commission had intended to follow up this report with a more intensive review of the planning process and the legal effect of official plans. However in 1968 six cities submitted private bills to the Legislature asking for the authority to exercise site-specific development control through zoning by-law amendments. As a result, the work shifted to a further evaluation of the issues related to zoning and development control outlined in the first report.

1.6 Professor Milner's second report found that there was little demand to replace traditional zoning with a system of development permits, but concluded that because of the need for frequent amendments zoning is unnecessarily cumbersome as a development control tool. The report recommended that special site development control powers be allowed in defined areas in municipalities with the capability to administer such controls. The report also recommended that the zoning and subdivision control processes be merged into a single system of development control.

*Milner, J. B., *Tentative Proposals for the Reform of the Ontario Law Relating to Community Planning and Land Use Controls*, Ontario Law Reform Commission, 1967.

Milner, J. B., *Development Control: Some Less Tentative Proposals*, Ontario Law Reform Commission, 1969.

Ontario Law Reform Commission, *Report on Development Control*, 1971.

1.7 The Law Reform Commission's final report in 1971 was concerned with the difficulties that municipalities faced in imposing development conditions through the zoning process, and with the doubtful legal validity of the site-plan agreements and requirements in use in a number of municipalities. The Commission concluded that an overall review of the planning process was necessary, and that a universal development control system should not be instituted unless the suggested review found it desirable. As an interim measure, the Commission recommended that municipalities be given limited additional site-planning control powers.

1.8 Section 35a of the Act was enacted in 1973. It allows municipalities certain powers of development review on a site basis, in general accordance with the Commission's recommendations.

Select Committee on the Ontario Municipal Board

1.9 The Legislature's Select Committee on the Ontario Municipal Board reviewed the entire range of the Board's responsibilities and practices in 1972.* With respect to planning, the Committee's main findings concerned the Board's practices and procedures in dealing with municipal planning matters, particularly zoning by-laws, and with the problems of public involvement in the municipal planning process. The Committee's main recommendations concerning the Board's role in municipal planning included the following: 1) Retention of the Board's role as an independent tribunal. 2) Constituting the Board as an appellate agency rather than an agency conducting *de novo* proceedings. 3) Clearer government direction concerning provincial policies to be followed by the Board. 4) Proclamation of provincial regulations allowing non-contested zoning by-laws to come into force without O.M.B. approval. 5) Some limitation on the right to appeal O.M.B. decisions to the Cabinet. The Committee recommended that the rights of the public to present their views and raise objections to municipal planning decisions be extended and clarified. It also proposed that a comprehensive review of the municipal planning process be undertaken.

1.10 The Committee recommendations that served to confirm the existing role and status of the Board were, in effect, adopted by the government, as there has been no change in this regard. Except for the issuance of intermittent policy directives from the Provincial Treasurer, there has been almost no action taken on the Committee's other recommendations relating to municipal planning, apart from the present review of *The Planning Act.*

Ontario Economic Council

1.11 As part of a series of studies on the development of provincial government policy, the Ontario Economic Council commissioned a report on municipal planning which was issued in 1973. **The report dealt with a broad range of matters relating to municipal and provincial planning and put forth a series

*Province of Ontario, *Report of the Select Committee on the Ontario Municipal Board*, 1972.

**Ontario Economic Council, *Subject to Approval: A Review of Municipal Planning in Ontario*, 1973.

of recommendations concerning *The Planning Act*, concerning provincial policies, and concerning planning practices and procedures at the municipal and provincial levels.

1.12 The main changes proposed in *The Planning Act* were the following: 1) Statutory recognition of a hierarchy of public plans, consisting of: a) provincial plans, for the province as a whole and for the five then-existing provincial economic regions; b) municipal structure or policy plans; and c) municipal district or secondary plans. 2) Continuation of provincial approval of municipal structure plans, but not of district plans in municipalities having adequate planning capability. 3) Assigning responsibility for preparing plans and granting consents directly to municipal councils (rather than to planning boards and committees of adjustment/land division committees). 4) Delegating subdivision approval powers to regional municipalities and other municipalities with planning capability. 5) Delegating to municipalities with adequate planning capability the authority to enact zoning by-laws without Ontario Municipal Board approval. 6) Instituting a statutory development permit system in place of zoning in designated areas of change or growth. 7) Allowing municipalities to secure parkland in relation to population density, rather than as a percentage of land area to be developed. 8) Hearing of planning appeals and objections by provincial inspectors, reporting to the Minister (in place of the O.M.B.). 9) Establishment of ministerial regulations concerning notice and public appeal rights on all types of municipal planning decisions. 10) Establishment of regulations setting limits on permissible municipal financial imposts and subdivision approval conditions.

1.13 The report's main policy recommendations were that the government adopt comprehensive policies regarding housing, social development and environmental quality, and that it prepare and adopt a provincial structure and development plan. Among the main recommendations concerning provincial practices and procedures were the following: 1) Decentralization of provincial planning activities. 2) Preparation of comprehensive circulars and manuals dealing with provincial policies, procedural guidelines, and municipal planning practices. 3) Provincial grants to municipalities for planning assistance. 4) Appointment of a planning ombudsman to assist the public in dealing with planning grievances.

1.14 On receipt of the O.E.C. report the government announced that it would carry out a comprehensive review of *The Planning Act*. Some specific actions taken since 1973 have been in accord with the recommendations in the O.E.C. report, including the following: 1) Subdivision approval authority has been delegated to a number of regional municipalities. 2) Section 35b was added to the Act to allow municipalities to secure parkland in certain circumstances on a basis related to population. 3) A program of financial grants for the preparation of municipal plans has been instituted. 4) Ministry guidelines have been issued on various subjects; they do not however have the legal force of the circulars recommended in the report.

Advisory Task Force on Housing Policy

1.15 The report of the Housing Task Force, which was issued in 1973, dealt mainly with the provincial government's role in housing.* The report proposed that the provincial responsibilities relating to municipal and provincial planning should be integrated with its housing responsibilities, and that housing supply and cost considerations should play a major part in determining provincial and municipal planning policies. Among the Task Force recommendations, the following related directly to municipal planning: 1) That all of the provincial housing and planning responsibilities be placed in a single ministry. 2) That the government establish suitable municipal development standards related to housing cost factors, and clarify and simplify development regulation procedures and practices in order to promote the supply of housing. The Task Force report also recommended that municipalities not be allowed to engage in exclusionary housing practices.

1.16 The government's principal response to the Task Force report was the creation of the Ministry of Housing in 1973, with the Minister of Housing made responsible for both the government's housing activities and its municipal planning responsibilities under *The Planning Act*. Steps have been taken to simplify and speed up the processing of subdivision plans, and work has been initiated to establish suitable development standards related to housing cost considerations.

Recent trends

1.17 These studies and investigations have reflected, in part at least, profound social, economic and cultural changes that have been taking place in many Ontario communities. Some of these changes can usefully be enumerated. Foremost perhaps is the shift in social and community values that has characterized the recent period. These include, among others, a growing consciousness of the natural environment and a growing concern with the natural environment consequences of urban development; concern that agricultural land be preserved and that rural land be treated as a natural resource rather than a resource for urban use; concern for public access and involvement in the making of planning decisions; and, latterly, an emerging concern for the energy consumption implications of urban development decisions. These concerns have led to a still unresolved controversy between growth and anti-growth philosophies. There has also been an increasing public conviction that municipal planning should be more value-oriented, and that the process should be made more accountable.

1.18 These trends in community and social values have occurred at a time of considerable change in the physical and social character of the province's urban and rural communities. Among these changes are the intensification of urban development densities; major changes in urban social structure; decentralization and other shifts in the location of urban economic activities; increased urban exploitation of rural recreational and residential opportunities; and significant depopulation of many rural communities.

*Province of Ontario, *Report of the Advisory Task Force on Housing Policy*, 1973.

1.19 There have as well been profound changes in the structure, organization and financing of municipal government, and in the provincial role in local government affairs. The structural changes that began with the creation of Metropolitan Toronto some twenty-five years ago have included the restructuring of a dozen more regional areas into two-tier governments, and some major transformations in the scale of local government through large-scale annexations and consolidations, such as those that took place in the Timmins and Lakehead areas. Among the organizational changes have been a consolidation of various local boards and a reallocation of many local board responsibilities directly to municipal councils. There has also been a sharp increase in the share of municipal costs financed through provincial transfer payments. These changes have reflected to a considerable extent the provincial government's growing assertiveness and intervention in local government affairs, which has included as well the intermittent imposition of provincial planning policies of one kind or another.

1.20 There has been a growing demand from many municipalities and various public and private interests for substantial reforms to the municipal planning system and to *The Planning Act*. Both the Law Reform Commission and the Select Committee on the Ontario Municipal Board felt that a comprehensive review of municipal planning legislation was needed. The essential case for a review of *The Planning Act* was made in the Select Committee's report:

> Conditions and public goals have changed enormously since *The Planning Act* was passed in 1946; indeed, there has probably been no other quarter-century in the history of Ontario when there have been changes as radical as those brought about through industrial and population growth and the accompanying process of urbanization. And so the Act itself, though a model of progressive legislation in its day, seems due for a thorough review, as do the procedures that flow from it and from other relevant Acts. (Report of the Select Committee, p. 12)

1.21 The terms of reference of The Planning Act Review have been drawn broadly.* They encompass a wide range of considerations concerning the nature and results of municipal and provincial planning and the structure of the planning system. The organization of the review has been directed to the legislative base for municipal planning, *The Planning Act*, and to a consideration of desirable changes within the broad framework provided by the terms of reference.

1.22 The Ontario planning system is well established. Our review has of necessity concentrated on its inadequacies, and on the serious problems that undoubtedly exist. But in our work we have been aware that the municipal planning system in Ontario has by and large produced very good results. We are also aware that we are dealing with an operating system which permeates municipal life throughout the Province. Our conclusion that the system should be reformed is taken with the knowledge that it is a system that works, and in many respects works well.

*See Appendix A.

2 basis and framework of the review

2.1 The Committee has carried out its work on the basis of principles and assumptions about the nature and purpose of municipal planning, the role and responsibility of government in planning, and the nature and function of planning legislation. The Committee has also operated under a set of premises concerning the way in which government operates, an explicit philosophy of government. These principles, assumptions and premises constitute the basis and framework of our review of *The Planning Act*.

2.2 These are not the only principles, premises and assumptions that could have been established. A review of the Act carried out within a different framework might have reached different conclusions. It is important that the basis of our work be clearly identified. We presume that our conclusions and recommendations will be assessed in the light of the basic framework we employed.

2.3 The essential purpose of the review is to determine how the existing planning legislation should be changed in order to support the ability of municipalities to engage effectively in planning, and the ability of the provincial government to secure its own interests respecting municipal planning.

Basis of the work

2.4 We have reviewed the main elements of municipal planning: the legal instruments, the procedures and practices employed, and the parties involved in the system. We drew on the experience of the various participants: the provincial government and its agencies; the municipalities and other public agencies; and the different "publics" involved in municipal planning. We noted that the experiences reported to us did not lead to clear and precise conclusions, and that they conflicted in many important respects. We also reviewed the relevant documentation, and carried out our own studies in an effort to draw documentary material and current experience together into a coherent context.*

2.5 Three main questions served as the focus of our investigations:

- What are the proper provincial interests in municipal planning?
- What are the municipal needs with respect to municipal planning?
- What are the interests and needs of the other participants in the municipal planning process?

*See Appendix B for a description of the Background Studies.

2.6 We posed questions concerning the broad range of provincial activities affecting municipal planning — legislation, policies, programs and practices. We tried to determine the areas of provincial interest in municipal planning in which explicit provincial policies are necessary or desirable, and also how the provincial interest in municipal planning can be secured in the absence of explicit policies or while these policies are being determined.

2.7 This led us to consider necessary or desirable changes in the provincial involvement in municipal planning: the government's authority and responsibilities, its organization and administration, its procedures and practices. These issues were framed in the context of our main concern, *The Planning Act*, and in the context of related provincial legislation which impinges directly on municipal planning. We were not asked to review provincial planning or related provincial legislation *per se* and examined these only as they affect the operation of municipal planning under *The Planning Act*.

2.8 Our review of municipal elements in the planning system posed two kinds of questions. First, how do municipalities operate in the system today? What can they do? What can they not do? What are they required to do? What do they do anyway?

2.9 The second set of questions concerned the necessary or desirable changes with respect to the authority and responsibility of municipalities, their organization and administration, and their procedures and practices. We also posed these questions in the context of our primary concern, *The Planning Act*. We were not asked to carry out a study of the operation of municipal planning *per se*, and we examined it only as it bears on the legislation.

2.10 We identified other parties that are involved in or affected by the operation of municipal planning — the range of different "publics". We saw these publics as consisting mainly of organized community interests; rural land interests; the land development and real estate industry; and the professions involved in development — law, planning, architecture, engineering, land economics and surveying. We acknowledged from the outset that the way in which the review was structured would not give us access to the views, interests or concerns of the individual residents of the Province, and we understood that a process of public consultation would take place in the government's consideration of our report and recommendations.

2.11 We examined the interests, concerns and responsibilities of these other parties in the municipal planning system. We tried to define their needs, what they require from the system, and to reach conclusions regarding changes necessary to satisfy their interests and needs.

2.12 Although federal policies and activities exert great influence on municipal planning, they were not part of our terms of reference. We did not examine

federal-provincial relations, and of necessity assumed that the present allocation of authority between the provincial and federal governments would remain substantially as it is today. We assumed that the provincial government would take account of any changes in these relationships in its consideration of our findings and recommendations.

Approach to change

2.13 We approached the review with the assumption that changes in the municipal planning system are necessary. We took it as given that the existing system is deficient in important respects. From our own knowledge and experience and the evidence of earlier work, we assumed that if changes were not necessary, there would have been no need for this review.

2.14 We saw our task, not to establish whether changes are necessary, but to determine what should be changed and the extent to which change should take place. We established, at the outset, the limits to the kinds of change we would consider:

- Proposed changes in the system should not further complicate or disorganize an already complicated system. Changes which would have unpredictable consequences should be guarded against.
- Proposed changes should not interfere with legitimate public or private interests that have been created over the years on the basis of existing law and precedent. They should not produce gross or otherwise unacceptable violations of social, economic and physical expectations that have been built up over the years under the existing system.
- A totally new planning system should not be considered unless the weight of the evidence points overwhelmingly to the need for such a radical measure.

2.15 In the submissions received from municipalities, from the many "publics", from the ministries and agencies of the provincial government, and from our own definition and analysis of the problems, we could find no compelling reasons for recommending a totally new kind of planning system. Nor could we find an overriding need to propose changes that would involve radical redefinitions of the nature of local government, or the nature of property rights. We do not suggest that a need for radical change might not be warranted under other kinds of assumptions, but only that the nature of our review and the submissions we received did not lead to such conclusions.

2.16 We consequently saw our task as identifying a spectrum of changes ranging from *improvements* to the existing system, to *major reforms* of the principles and components of the system.

2.17 We directed ourselves to proposed changes with two assumptions in mind. The first was that changes to the existing planning system would be applied differentially to meet different circumstances and situations; that the same kind, scale or scope of change would not be required for all municipalities in the Province.

2.18 Our second assumption was that improvement, rather than major reform, would be indicated for any of these purposes:

- To provide for necessary changes where a substantial overhaul is not appropriate.
- To serve as an interim measure while a major reform is being phased in.
- As an alternative course of action if the government decides not to accept certain of our conclusions concerning major reform, and where it therefore becomes necessary to institute improvements in order to better the working of the existing system.

Philosophy of government

2.19 Our consideration of *The Planning Act* and of municipal planning is conditioned by certain basic philosophical precepts concerning the structure and operation of government.

2.20 We accept the principle that policy decisions having the force of law should be made, in the first instance, by bodies or persons elected to make such decisions. This means that actions having legal status should ultimately derive only from the decisions of elected bodies. Municipal planning policies should be established only by municipal councils; provincial policy and decisions concerning municipal planning should be made only by the Legislature or Cabinet ministers.

2.21 This principle accepts that administrative decisions taken within the framework of policies established by publicly elected bodies, or, within limits, involving elaborations of such policies, have proper legal status.

2.22 We accept also the principle that since planning deals with the definition of values, the establishment of priorities, and the allocation of benefits in the common weal, it is by its very nature political. We do not accept that planning consists of non-political value-free definitions of right or wrong, good or bad. We do not hold that politics can be taken out of planning, nor planning out of politics. Simply stated, taking a decision out of politics means removing it from public scrutiny and control. We accept that the political process is the most appropriate way to establish planning policy and to make planning decisions, and that politics are at the centre of planning.

2.23 Because municipal councils are responsible for municipal policy they must be free to review and revise policies as they see fit. Apart from an absolute requirement that proper processes are followed, we accept as a principle that there should be no built-in constraint (except for overriding provincial or judicial constraints), which would limit the ability of an elected council to establish its own policies, even where this involves substantial changes from the policies of previous councils.

2.24 We accept, finally, the principle that persons and bodies making planning decisions should be fully accountable for their decisions. There should be a clear identification of who has made the actual decision. There should be an

unfettered public right to know that a decision has been made, and to the reasons for the decision. There should be unfettered public access to the information on which the decision has been based.

2.25 We appreciate that "unfettered" access to information may conflict with the principle of Cabinet confidentiality and, by extension, the principle of confidentiality between a government and its advisers. Principles and practices of parliamentary government are outside our terms of reference, and we assume that our specific proposals will be reviewed in the context of the prevailing arrangements concerning Cabinet material. We suggest though, that there is a distinction between *information* and *advice*. We accept the principle that a government is responsible for making available to the public all relevant information on the substance of a planning issue. But government is not obligated to reveal the advice it has received concerning the courses of action it might take, as the responsibility for that decision lies with the government and not with its advisers. We recognize that the line between information and advice can in practice be difficult to define, but it exists and has to be recognized.

Nature and characteristics of legislation

2.26 We have developed a set of criteria which are intended to define the proper nature of municipal planning legislation and the system created by legislation. These criteria are the touchstones against which we have measured possible or proposed changes.

2.27 We assume that the legislation and the planning system should be:

- **Rational:** The legislation should make sense in both concept and application. It should be directly appropriate to the circumstances and issues it deals with. The legislation should operate directly on perceived needs, rather than indirectly.* It should be directed to specific, rather than general purposes. It should be designed to apply consistently to similar kinds of situations or circumstances.
- **Clear and intelligible:** The legislation and supporting regulations should be set out in a way that provides maximum certainty as to their meaning and application. The standards employed should be clear and precise. The language of the legislation and regulations should not only meet the test of legal certainty, but should also be capable of supporting common sense interpretation.
- **Equitable:** Planning mechanisms should provide protection from administrative abuse to all affected parties, and should provide adequate opportunities for redressing grievances. The legislation should ensure fair treatment for all parties, and for the fair and expeditious resolution of grievances.

*An illustration of the undesirable use of legislation to deal indirectly with perceived needs is Section 31(1) of *The Planning Act,* which removed from local committees of adjustment the power to grant separation consents if the municipality did not have an approved official plan in place prior to 1974. It is understood that this was inserted in the Act not so much to deal with the question of consents as to induce municipal councils to adopt official plans. It may be noted that a number of municipalities which failed to meet the deadline are still without an approved official plan.

- **Reliable and predictable:** The legislation and planning system should ensure reasonable consistency in approach and results over time. Parties affected by the system should be able to rely on accepted premises as to how the system is expected to work.
- **Economic in time and cost:** The system should be self-administering to the greatest possible extent. The opportunities for exercising administrative discretion should be kept to a minimum.

2.28 The purposes of the legislation and the planning system should be set out clearly. As matters now stand, the legislation sets out the planning system, defines the agencies, and equips them with authority and powers, but does not adequately indicate the purposes for which the system is designed.

2.29 The legislation should provide a clear distinction among the matters covered in the legislation itself, in supporting regulations, and in administrative guidelines. It should stipulate the respective scope and purposes of these different instruments and the circumstances in which they are to be employed. Policy formulations should to the greatest possible extent be contained in legislation or regulations. Basic policies, adopted by the Legislature, should be incorporated in legislation. Policy elaborations by the Cabinet or individual ministers should be expressed through regulations or other statutory orders.

2.30 In the existing system a number of different Acts deal in different ways with similar kinds of situations and impose different legal requirements in essentially similar circumstances. There should be consistency in the application of different laws to common situations. The standards employed in different acts should be consistent in their formulation and application. There should be substantive coherence and consistency, though not necessarily uniformity, of legal requirements; different requirements applicable to common matters, such as particular properties or particular projects, should be designed to produce coherent results.

Nature and purpose of municipal planning

2.31 Municipal planning, as generally understood within the scope of *The Planning Act*, does not embrace the total purposes of municipal government. It should not, as the Act implies, embrace all municipal policies and programs affecting the health, safety, welfare and convenience of the inhabitants of the municipality. *Health, safety,* and *welfare* are broad municipal responsibilities under *The Municipal Act* and other acts which transcend the scope of the municipal planning system. It is not possible to define *convenience* in generic rather than specific terms, or to achieve planning policies and programs that will suit the convenience of all of the community's inhabitants. As with health, safety and welfare, convenience is, in any event, more properly a broad responsibility of municipal government than a specific responsibility of municipal planning.

2.32 As practiced under *The Planning Act*, municipal planning is not the same as municipal management. It is not a substitute for municipal corporate planning, nor the appropriate vehicle for overall financial, economic or social planning. We do not discount the importance of these activities in municipal

management, but conclude that it is simply not appropriate to equate them with municipal planning as the term is commonly understood, or to make them the responsibility of the operators of municipal planning.

2.33 In defining the nature and purpose of municipal planning, its limitations must be taken into account. The purposes of municipal planning are related to and are therefore circumscribed by the available instruments and their capabilities. These instruments are largely concerned with the regulation of land use, the control of physical development, and municipal programs for the provision of public works, facilities and services. Municipal planning has taken on its meaning primarily from the instruments established to carry it out.

2.34 Our view is that municipal planning should be concerned with the physical development of the community, and that its primary purpose is to establish and carry out municipal policies and programs for the rational management of the municipality's physical development. We take physical development to include, by definition, the physical growth of the community, its redevelopment, its stabilization, or even its decline. Municipal planning should provide the basis on which the municipality establishes its programs and policies concerning any or all of these processes.

2.35 Municipal planning should not be expected to take on goals or objectives that cannot realistically be achieved with the available tools. These tools relate primarily to the physical development of the community and cannot realistically serve as the prime or major vehicle for achieving the municipality's social or economic goals. But municipal planning should be expected to take account of all the appropriate concerns affecting the life of the community. Municipal planning must therefore *have regard for* social and economic concerns and needs in establishing the community's physical development goals, and must *take account of* the social and economic consequences of municipal development policies and programs.

Orientation

2.36 We see two particular questions of policy orientation as essential in the framework for planning legislation and the planning system. The first concerns the matter of use. We take it as given that municipal planning is concerned to a substantial extent with the way in which property is used: the uses to which a property is put and its performance characteristics. Except insofar as the property's use is affected, we do not see this concern as extending to who owns or occupies that property. This derives from the principle that people should be free to live where they choose within community health and safety standards, and act as they please, except insofar as this impinges unfairly on others. It seems to us an unassailable principle that the planning system should not operate so as to allow the inhabitants of an area, either individually or collectively, to determine who or what kind of people will not be allowed to live there, either next door or in the area generally.

2.37 The other matter of orientation concerns the burden for intervention into private development decisions. We have concluded that in an operational sense, the planning system should not be directed toward the justification of

development proposals, but to justifying their rejection or modification on the grounds of performance, i.e. on the grounds that others are affected unfairly or that the community's interests are affected adversely. We have noted that the British system of planning control, formulated in a context in which all development must as a general rule receive permission, operates from the same premise:

> . . .that planning permission should be granted unless there is a sound and clear-cut planning reason for refusal. The onus, therefore, lies on the authority to show that proposed development is not acceptable, rather that on the applicant that it is. (Department of Environment Circular 9/76)

We are certain that in a system such as our own, in which development and use are generally permitted as of right, the onus should rest equally firmly on the government to demonstrate why private parties should not be allowed to do what they want.

Allocation of planning authority

2.38 We begin with the recognition that municipal government is not a constitutionally entrenched entity, and that it obtains its powers only by provincial assignment or delegation. We assume that all municipal actions take place within a provincially defined system of municipal responsibility in which municipalities may, as appropriate, perform functions prescribed by the Province, or act as the agent of the Province, or exercise discretion within bounds set by the Province.

2.39 In allocating planning responsibilities among the different levels of government, it is important to distinguish between the delegation and the assignment of planning authority. As we use the terms, the *delegation* of provincial planning authority to a municipality calls for the municipality to act *on behalf* of the Province; the *assignment* of planning authority allows the municipality to act *in place* of the Province.

2.40 The distinction is important. Our general view on planning autonomy is that municipalities should be *assigned* the authority to *establish* or implement planning policies where there is no "legitimate" or formally expressed provincial interest. We have also concluded that municipalities should be *delegated* the authority to *administer* or implement policies within the framework of established provincial policies or programs and within established provincial procedural or performance criteria.

2.41 We appreciate that in a constitutional and legal sense, municipal authority is a form of delegated authority. We do not think it should necessarily be seen this way in operational terms. We assume that in those situations where municipalities are allowed to act on their own behalf, the legislation should be structured to provide this authority *as though* it were assigned directly to them, though remaining in a technical sense, authority delegated to them.

2.42 We assume that the line between provincial and municipal interests, and between regional and local government interests, is ultimately reflected in the territorial scope assigned to municipal governments, the functional powers

and responsibilities assigned or delegated to them, and the structural and financial arrangements for carrying out these functions. We assume, in considering the distribution of planning responsibilities, that any level of government should in the end concern itself only with those matters of direct interest to it. It follows that:

- No level of government should act beyond its own explicity defined interests.
- The activities of a lower level of government should be supervised only to the extent necessary to protect or secure the explicitly defined interests of the higher level.
- A higher level of government should not intervene in the actions of a lower level on the presumption that the higher level possesses superior knowledge or wisdom regarding lower-level matters.

2.43 We operate on the assumption that there should be the greatest practical degree of planning autonomy at the lowest level suitable to the circumstances. Our conclusion is that all those matters that have not been defined as lying explicitly within the area of interest of a higher level of government should rest with the lower level. Municipal governments should be seen as possessing the residual planning powers which the provincial government does not, by definition, require in order to secure its own interests.

Provincial and upper-tier interests

2.44 The provincial government's basic interest in municipal planning derives, by definition, from the interests of the people of the Province taken as a whole. These interests concern the implementation of provincial policies and programs, the conservation and the distribution of resources, and the assurance of natural justice to the inhabitants of the Province. Within this broad framework, it is possible to establish the Province's explicit interests in the operation of the municipal planning system under various circumstances. Our specific conclusions and recommendations concerning the provincial role in municipal planning derive from this basic formulation.

2.45 Our view of the planning responsibility of upper-tier municipalities follows similar lines. We assume that the need for universal two-tier planning has not been established; that two-tier planning is required in some circumstances and may be unnecessary or inappropriate in others. We assume that two-tier planning is appropriate where there are planning needs which transcend local municipal boundaries, and where upper-tier planning authority is needed to secure consistent and coordinated local planning decisions on matters of area-wide concern. We assume also that the planning activities of upper-tier municipalities, and their intervention in lower-tier planning decisions, should be restricted, as in the case of the Province, to explicitly stated upper-tier interests.

2.46 The planning interests of an upper-tier municipality derive, by definition, from the needs of the residents of the area taken as a whole. These interests involve the implementation of programs and policies for which the upper-tier municipality has statutory responsibilities, or which deal with area-wide

social, economic or physical development concerns. It is within this kind of broad framework that upper-tier planning responsibility should be defined, and the limits for upper-tier intervention in local municipal planning set.

2.47 Provincial intervention in municipal planning should be carried out in a way that reflects provincial interests in a formal, responsible and disciplined manner. It should be expressed through one or another of the following:

- Provincial statutes and regulations
- Formally adopted and published government policy statements
- Government decisions, made from time to time, which are published and distributed in an appropriate form.

We take "government" as the agent of formal policy decisions to include the Legislature, the Cabinet, or a minister or committee of ministers designated by the Cabinet for this purpose.

2.48 Upper-tier intervention in the planning activities of local municipalities should follow similar lines. It should be carried out in a formal, responsible and disciplined manner, and should be expressed through one or another of the following:

- Formally adopted plans
- Formally adopted policies
- Upper-tier council decisions made from time to time

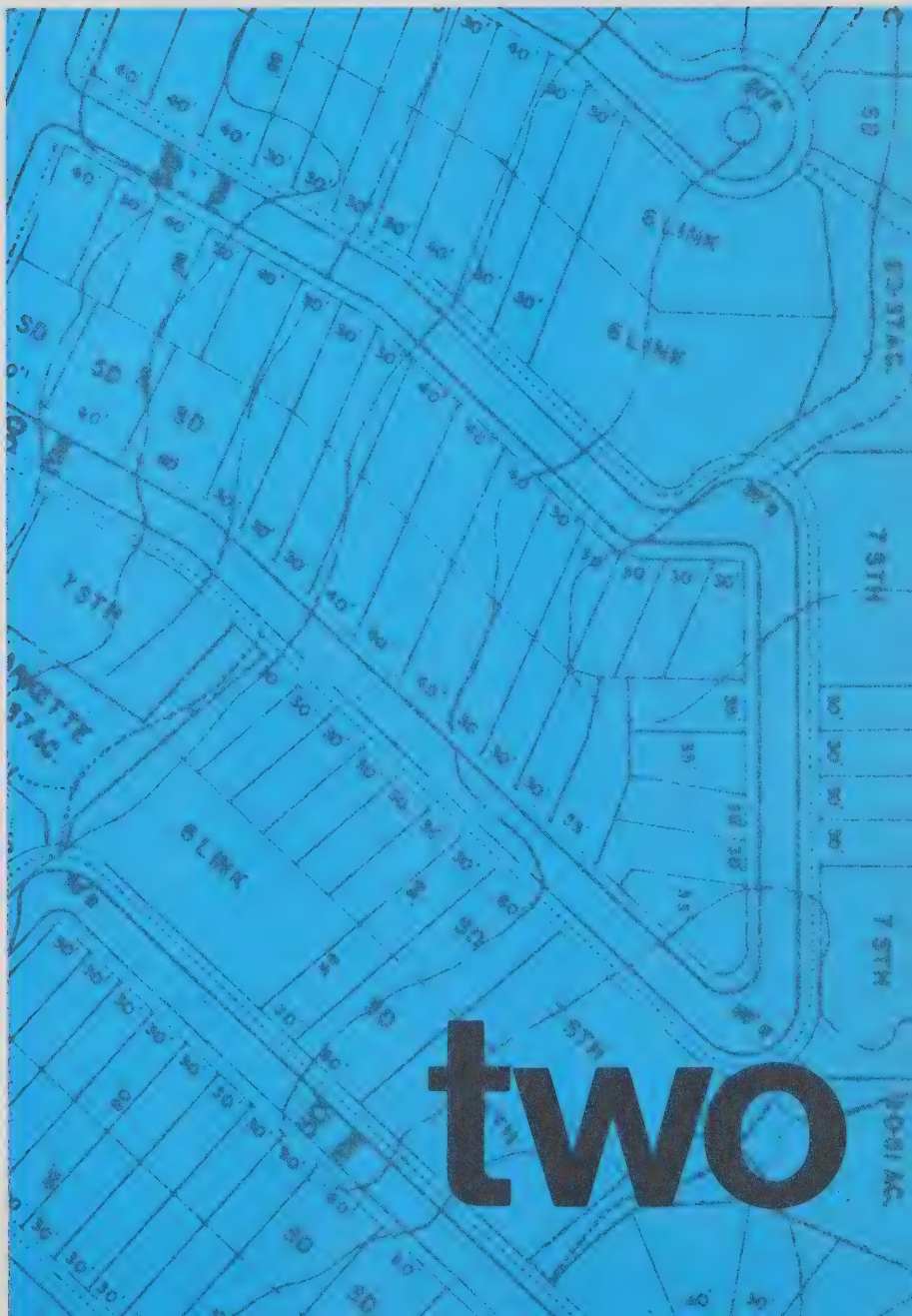
We assume that the agent of upper-tier policy decisions is, at all times, the council of the upper-tier municipality.

2.49 From these definitions of higher-level interests, we conclude that higher-level intervention in the planning policies and activities of the lower levels of government may take the following forms:

- **Monitoring** lower-level actions in order to object to or reject those policies or decisions which adversely affect the stated interests, policies or programs of the higher government level. We see this as the common norm for direct higher-level intervention in lower-level planning.
- **Guiding and assisting** the lower-level with regard to the implementation of upper-level interests and the resolution of lower-level problems. We see this role as of crucial importance in establishing constructive planning relationships between the provincial and municipal governments, and between upper and lower-tier municipalities.
- **Supervising and approving** lower-level planning actions. This is the norm today, but should be the exception. It should take place only in stated circumstances for which explicit justification has been established.

2.50 We have outlined here the principles that we adopted concerning the allocation of planning authority and responsibility, and the premises we proceeded on concerning the nature of municipal planning and the nature of planning legislation. They have constituted the framework for our consideration of desirable reforms to the municipal planning system.

proposed major reforms



two

3 basis of the proposed reforms

3.1 In carrying out its work, the committee has had the benefit of the views and experiences of many hundreds of persons throughout the Province, both individually and through their organizations. Their opinions and suggestions deal with almost every aspect of the municipal planning system, including all the directly relevant matters and a broad assortment of peripheral concerns. A full account of the problems and issues involved in municipal planning can be found in the background reports that were prepared for our use, particularly the summary and analysis of the public consultation program and the report on our survey of selected municipal planning operations.*

3.2 The reported experiences and views were divergent and contradictory in many important respects. A significant conclusion can be drawn from the municipal planning survey and the responses to the survey report. It is that the persons who are most intimately involved with the operation of municipal planning (municipal and provincial planners, other municipal officials, municipal councillors and planning board members, professional planning consultants and lawyers) are by and large unable to agree on any of the following matters:

- How the planning system actually works
- How the common planning instruments (official plans, zoning, subdivision approval, consents, development review) are actually used, and how well they are suited for the uses to which they are put
- The purposes and objectives of municipal planning
- The effectiveness of municipal planning
- What should be done to improve the system or its instruments

3.3 This finding is not surprising. The sheer complexity of the municipal planning system is almost bound to produce different perceptions of how it operates, how it should operate, and what the system is intended to achieve. Our review of public opinions, and of the experiences of those who operate the system and those affected by its operation, has convinced us that there is no common position to be taken that will be satisfactory to all or even most of the parties involved. We have depended heavily on the experiences of the participants to help us define the issues to be considered, but have had to work out for ourselves what should be done about them.

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*Review Staff, *Planning Issues: The Public Consultation Program* Background Paper 1 (Planning Act Review Committee, 1977)

Llewelyn Davies Weeks Canada, *Operation of Municipal Planning* Background Paper 2 (Planning Act Review Committee, 1977)

3.4 The specific issues and problems are described in the background papers. For the purpose of establishing where major reforms are needed and what these reforms should be, the important questions concern essentially the characteristics of the municipal planning system, the public perceptions of the system, and the relationships between the provincial and municipal governments with respect to municipal planning.

Characteristics of the system

3.5 The municipal planning system is characterized by a division of powers between the municipalities and the Province, by a fragmentation of authority within each governmental level, and by separation between the authority for making planning decisions and the responsibility for the content of those decisions. At the municipal level, authority and responsibility are divided among elected councils, appointed boards and appointed officials. At the provincial level authority and responsibility are diffused among different ministries and ministry sub-units and a range of appointed officials. The substance of planning decisions (for example, subdivision approval conditions) is frequently established by persons or agencies well removed from the formal decision role. The distinction between authority and responsibility is sometimes visible and acknowledged, but is at other times difficult for persons outside the system to comprehend.

3.6 Under the circumstances there is, not surprisingly, less than full accountability for planning decisions. To begin with, decisions are frequently made by not being made, or by not having been allowed to be made. The agents of the decisions that are made cannot always be clearly identified. It can be exceedingly difficult, on occasion, to determine accurately who has been responsible for a decision and the basis for the decision. It can thus be hard at times to secure suitable redress for unfair or unreasonable decisions or non-decisions, or to secure adequate guidance as to how to proceed so as to obtain a different decision.

3.7 Because of the fragmentation of authority and responsibility there is, as well, a prevailing uncertainty and inconsistency in the way the system can operate. The likely actions of public agencies can be difficult to predict, because the basis of these actions cannot be determined in advance. There is a high potential for arbitrary or unsupported decision making. The result, on occasion, is inequitable or unequal treatment of persons or interests in similar circumstances.

3.8 Despite its uncertainties, the system is marked by a seeming inflexibility, with its policies and programs imbedded in frozen or near frozen instruments. Yet this characteristic is often more apparent than real. Because their ability to make decisions is bound by the content of formal planning instruments, municipal bodies often make their decisions in other ways, paying formal attention to the statutory instruments but placing major substantive interests outside the scope of these instruments (capital works programs, for example). There is thus a paradox of a seeming stability that is at bottom not fixed, of a system that is on its face tight and binding but in practice relatively flexible. This is not necessarily a disability, to the extent that it is understood. But our experience in the review is that this counterpoise between the system's rigidity and its flexibility is far from universally understood, even by its practitioners.

3.9 With divided powers, fragmented authority, and diffused responsibility has emerged a system of considerable complexity. It is a system built, not unnaturally, on paper, and is not surprisingly slow moving. It is a system with an inherent potential for delay and high built-in costs. Our review has convinced us that more effort is frequently spent in moving matters through the system than in the direct pursuit of substantive planning goals. Because the system depends, in the final instance, on securing formal "approvals" of one kind or another, massive efforts are directed toward satisfying explicit, implicit, and frequently obscure approval requirements. The municipal planning system can by and large be mastered only by the experienced and the initiated. Municipal planning may not actually be, as has been suggested to us, the private preserve of the initiated, but it is certainly a system difficult for the uninitiated to penetrate. Affected interests — public and private, large and small, of broad or narrow significance — are to a large extent in the hands of the expertise and skill of the system's practitioners. The prevailing language of municipal planning is not the least of its problems.

Public perceptions

3.10 The effectiveness of municipal planning is conditioned by public perceptions of what the system does and how it operates and of the public's role in the system. One aspect of municipal planning is that expectations are created that cannot realistically be achieved. This reflects some widespread assumptions. One is an almost explicit belief that a municipality's planning policies should derive from a community consensus, and that consensus is in fact possible. This might have been more or less the case during the period when planning in Ontario took on its characteristic form. There is little doubt, for example, that the desirability or inevitability of urban growth was a commonly held position in most of the Ontario communities where planning was actively practiced, or that at least there was little opportunity to express conflicting values. There is equally little doubt that in many places there is today a wide disparity in the values held by different groups in the community, and by different public agencies dealing with common situations.

3.11 Given these disparities, it is then generally held that the planning system provides a way to reconcile conflicting and contradictory interests toward the achievement of some common goal. A process which can at best be an aid to adjusting conflicting demands on public policy is held responsible for resolving or eliminating these conflicts. One result is that many of the political accommodations that normally take place are widely seen as failures of the planning system. Political adjustments of competing interests are viewed as planning "sellouts". Among the unnatural burdens placed on municipal planning is that it is too often held responsible for the normal costs of democratic government, and that public frustration or disillusionment with the operation of municipal government is directed to the municipal planning process.

3.12 There is also an explicit assumption that the available planning instruments (mainly zoning and subdivision control) provide a suitable means for implementing broad or long-range public policies. Inherent constraints are not always perceived — that the instruments themselves cannot always take into account or respond readily to major shifts in population composition, community structure, residential occupancy patterns, and the distribution of

economic activities. Nor are the severe difficulties of directly regulating population distribution or of reorganizing prevailing land use patterns always acknowledged.

3.13 All these considerations come into play in the municipality's fundamental inability to make its plan "happen". While the words and diagrams in the plans may represent reasonable conjectures of what may take place under stipulated circumstances, they are often put forward and accepted as an accurate picture of what will take place. Thus, to take one example among many, planned capital works are given an implied future reality that does not take suitable account of the problems of producing them at an acceptable cost, to the projected specifications, and on time, if they are in fact produced at all.

3.14 Public perceptions of the planning system are further confused by uncertainty as to the public role in that system. The provisions for public knowledge of planning proposals, for public involvement in planning decisions, and for redress of public grievances are vague, inconsistent, and often ineffective. These provisions are often counterproductive, both in ensuring the equitable treatment of public rights and in maintaining an efficiently operating planning process. As we discuss later in the report, there is widespread unhappiness with the public role in municipal planning, strong belief that it should be clarified, and no agreement whatsoever on what should be done about it.

Municipal-provincial relationships

3.15 It is axiomatic that municipalities have problems with the Province. This has been perhaps the major burden of our examination in the field. The problems vary from place to place, and are different in kind and degree. But in the end they boil down to two — provincial policies and provincial practices.

Provincial policies

3.16 The fundamental municipal concern with provincial policies is their vagueness and uncertainty. Policies are seen to be lacking, or as being applied retroactively in an ad hoc way in response to particular municipal initiatives. Policies are found to be inconsistent or conflicting. Underlying these concerns is a fundamental uncertainty as to the government's commitment to implement its stated policies.

3.17 Concerning the place of provincial policies in municipal planning we make the following assumptions: 1) The Province has an unassailable right and responsibility to ensure that its policy interests are suitably secured in the operation of municipal planning. 2) The government's ability to secure its interest by way of specific municipal plans or planning decisions will vary with the particular interest involved. In some cases, prevention or overruling of particular municipal actions will be suitable. In others, it may be necessary to secure more positive provincial intervention in municipal plans.

3.18 We have been urged to identify those provincial policies that are of direct concern to municipal planning and to incorporate in our recommendations the specific policy directions that should be taken. As the review was not

established to consider any particular provincial policies, it is of course beyond our terms of reference to make specific policy recommendations. Our task is to consider how the legislative framework for municipal planning should be organized so that any provincial policies, and particularly those of direct municipal concern, can find suitable expression.

3.19 From our work we have concluded that certain provincial policy areas are central to the municipal planning operation. These include in particular the following: 1) Conservation and management of the natural environment. 2) Conservation and management of rural land, including the specific provincial policy interest in the preservation of agricultural land and in the management of mineral aggregate resources. 3) Assurance of an adequate supply of affordable housing. 4) Planning and development policies for the areas of northern Ontario that lie outside corporate municipal government boundaries. 5) Provincial economic planning and development strategy. From our work we have not been able to identify in a conclusive way particular provincial social development policies of central concern to municipal planning, apart from the provision of facilities for groups at risk.

3.20 The earlier studies have recommended that the Province adopt explicit policies in the areas of municipal planning concern, and latterly, that the Province adopt an explicit provincial plan. This might be desirable, but we do not believe the municipal planning system should be structured in such a way as to make its operation dependent on the existence either of explicit provincial policies or a provincial plan. Our proposed reforms do not say what the government's policies or plans should be, but rather how the system should be organized so that municipal planning can properly accommodate provincial policies and plans.*

Provincial practices

3.21 Municipal concern with provincial practices comes down, in essence, to the provincial decision making process. There is uncertainty as to the exact location, within the provincial government structure, of the effective responsibility for municipal planning. There is widespread uncertainty as to the main elements of the decision process: exactly who at the provincial level makes what kinds of decisions regarding municipal planning; the basis of these decisions; the procedures that are followed in arriving at decisions. There is a concomitant concern with the wide assortment of provincial persons who seem to be involved in different ways with provincial decisions, and the stream of paper the process produces. There is, in the end, widespread bewil-

*We note, as an illustration the recent Green Paper on "Food Land Guidelines" published by the Ministry of Agriculture and Food. This report suggests that the proposed policies be incorporated in municipal official plans in order to ensure the protection of better agricultural land. We have not seen it as our responsibility to examine these specific policies in terms of their being made a mandatory part of municipal plans, but propose instead that the legislation should be structured to enhance the government's ability to ensure that these policies are followed, if it should choose to do so. We are therefore making specific proposals regarding the Province's powers with respect to rural land and to provincial review of municipal plans, which will enable the government to establish whatever agricultural land policies it finds advisable.

derment with the essential paradox of the provincial role in municipal planning: indeterminate substantive policies within a framework of rigorous processes and procedures.

3.22 Our conclusion concerning provincial practices is simple: the system should be structured so that provincial behaviour is systemized and formalized, and so as to reduce the scope for idiosyncratic, non-accountable behaviour.

3.23 If it is axiomatic that municipalities have problems with the Province, it is also the case that the Province has problems with the municipalities. Apart from the natural complaint that municipalities may on occasion simply refuse to do what the Province wants them to do (a problem well beyond our terms of reference), the essential problem is the tendency of municipal councils to hide behind provincial coat tails, to pass on to the Province the responsibility for making the difficult, nasty decisions, or to settle for easy decisions in the knowledge that the Province will have the responsibility for changing those decisions. Our conclusion is that the present organization of planning responsibilities not only allows, but encourages, these practices. We do not think that what is essentially irresponsible behaviour can be eliminated through structural or statutory arrangements, but we do believe that the planning system can at least be organized to assign the responsibilities for decisions in an explicitly accountable manner.

3.24 We have considered the ability of municipalities to achieve their planning objectives through the existing arrangements, and the ability of the Province to secure its own interests, in different contexts: small communities; remote communities; central cities and other municipalities within a two-tier planning structure; large cities outside two-tier governments; and upper-tier municipalities.

A single Planning Act

3.25 Within these different circumstances we have directed our attention to two questions. First, whether a single provincial Planning Act can adequately accommodate these diverse types of situations. Our conclusion is that it can. Allowing that the particular requirements of restructured municipalities can be met through their individual Acts, we have concluded that a single Planning Act should be maintained.

Local autonomy

3.26 The second question is whether the different kinds of municipal situations call for a different placement of the decision making responsibility. The issue is whether the ultimate responsibility for municipal planning decisions should continue to be centralized, as it is now, so that generalized provincial interests can be protected, or whether the responsibility should be decentralized in the interest of local autonomy. The issue is not black and white, and does not lead to categorical answers. But we have come down firmly on the side of decentralized decision making and local autonomy.

3.27 We have concluded there should be local planning autonomy for three basic reasons: 1) We found no evidence that centralized decision making produces better municipal planning decisions. 2) We found no evidence that local

autonomy will not produce the desired results from the standpoint of either municipal or provincial planning interests. 3) We found that municipal planning decisions deal largely with matters of local community concern and should therefore in the first instance be determined locally. Where they involve matters of extra-local concern, the system should be organized to allow such extra-local matters to be properly expressed.

3.28 We are proposing a number of major reforms to the municipal planning system. They concern essentially the municipal planning legislation and the statutory instruments for municipal planning. We do not, in general, deal with planning practices and procedures, except as they arise from or relate directly to the legislation. Nor, as we indicated, do we deal with policy questions, except as they seem to be intrinsic in the structure of municipal planning.

3.29 Our proposed reforms, and the issues they arise from are discussed in the chapters which follow. As we noted earlier, we have also taken into account the need for improvements that should be given consideration regardless of the disposition of the proposed major reforms. These again relate to the planning legislation and the statutory instruments and constitute an essential part of our work. These proposed improvements are outlined in Part III of the report.

4 the provincial role in municipal planning

Provincial interests

4.1 In our view, the question of how to organize municipal planning begins with the definition of the Province's interest in the matter. Provincial interests in municipal planning have not been defined in *The Planning Act*, and are difficult to pin down at any given point in time. Provincial interests stem from the concerns of several ministries and extend over a broad range of subjects. Policies are constantly evolving and are subject to almost continual change. Despite the present uncertainty about the subject however, we believe it is possible to establish in principle the kinds of concerns the Province should legitimately have with respect to municipal planning. Provincial interests, by definition, derive from the government's obligations to the residents of the Province as a whole; they are interests which transcend municipal boundaries and the interests of the residents of any individual municipality.

4.2 We suggest that the Province-wide areas of interest cover essentially the following:

- The Province should not allow municipalities to take actions which impair the achievement of provincial policies and programs in economic, social and physical development, in the protection of the natural environment, and in the conservation and management of natural resources. Within this general scope of interest, we believe that matters of particular provincial concern should include the distribution of economic and social resources among the residents and regions of the Province; the maintenance of the Province's agricultural and rural base; and the distribution of activities which may be perceived to have an "undesirable" local impact but which are necessary from an overall Provincial standpoint (which, for example, can include such disparate matters as low-income housing, day nurseries and group homes, or sand and gravel extraction).

- The Province should not allow municipal planning actions that are likely to impair the Province's financial well-being.

- There is an overall provincial obligation to ensure that a municipality's planning actions do not violate the civil rights of the residents and other parties affected by these actions. The Province should ensure that basic principles of natural justice are adhered to in the conduct of municipal planning.

- Because the Province is ultimately responsible for local government, it should be concerned that municipalities have adequate resources and a suitable organizational structure for formulating planning policies and executing planning programs. We do not suggest that municipal planning should be subject to management scrutiny by the Province. In assigning planning authority to any municipality, however, there should be a reasonable assurance that the authority can be discharged adequately.

- There is a basic provincial concern that the planning activities of different municipalities and different public bodies are suitably coordinated. The Province should ensure that there is suitable machinery for resolving planning conflicts between municipalities and should act as the ultimate arbiter of intermunicipal disputes.

4.3 One matter that should not be of provincial interest is whether municipalities engage in "good planning" *per se*. Whether a municipality's planning is considered to be good or not depends very much on whose interests are being served. Where the provincial interest is being violated by a municipality's planning actions, the Province should be in a position to prevent or secure a change in such actions. Beyond this, good planning is a matter of local norms and standards and should be left for the municipality and its inhabitants to settle among themselves.

4.4 It is our proposal that the provincial interests in municipal planning should be defined in legislation. If these principles are altered over time or new provincial interests are identified, they should similarly be incorporated in the Act. It can be expected that the principles will be elaborated from time to time as specific provincial policies are articulated in detail (as, for example, the establishment of provincial policy on agricultural land use). The application of detailed provincial policies should be implemented by way of regulations or other statutory orders, formally adopted by the provincial Cabinet and having the force of law.

Provincial intervention in municipal planning

4.5 Provincial involvement in municipal planning should not go beyond formally defined provincial interests. This is not necessarily the case today. The Province now acts primarily in a supervisory role. It reviews almost all municipal planning decisions, and most of the important municipal planning actions (official plans, zoning, subdivision plan approval) are not effective until they have received provincial approval.* Provincial supervision may have been necessary in the past when municipal planning resources were less adequate, but this position is no longer appropriate today. It should not be necessary for the Province to approve municipal planning actions, but simply to make sure that these actions do not violate important provincial interests. We think this is an important distinction. To review in order to approve means that the Minister and his staff must make sure that everything is done the way they wish it to be done; to review in order to prevent what the Province considers undesirable means that the Minister and his staff need only concentrate on matters of direct provincial interest and can leave the rest alone. We propose that the provincial role be confined to making sure that municipalities do not act in ways which impair provincial interests.

*The Act allows the Minister to delegate his approval powers to municipalities. Subdivision approval has been delegated to a number of regional municipalities and it is intended that the regions will also receive the power to approve local official plans after their own official plans have received provincial approval. Despite the limited delegation that has already taken place, it is a general rule that municipal planning actions must be approved by the Province in order to take effect.

4.6 To prevent municipal actions that conflict with stated provincial interests, the Province should have formal power to veto those actions. However, the vetoing of municipal actions can present problems. There must be provincial willingness to exercise the veto in appropriate circumstances and there must also, in the end, be local acceptance of the Province's right to veto local actions. Provincial veto action should be reasoned and not arbitrary. It should be taken after proper consideration of the local interests involved; it should be preceded by suitable consultation with the municipal council and its officials; and it should be clear, when veto action is taken, exactly who at the provincial level is doing the vetoing. Veto of municipal actions is a serious responsibility which should be carried out in an authoritative and accountable manner.

4.7 We are making two proposals in this regard. First, the authority to veto municipal planning actions should rest with elected officials. It should be exercised by the Minister of Housing in those matters of primary concern to his ministry, and by the Cabinet (or an authorized committee of Cabinet) in those matters of concern to other ministries or to the government as a whole. This authority should not be delegated to appointed officials, and veto recommendations from other ministries should likewise be made by the Ministers concerned.

4.8 We also recommend that when a municipal planning action is vetoed, it should be mandatory for the Minister (or the Cabinet) to state the reasons for this action. By definition, these reasons should fall clearly within the legislative scope of the provincial interest in municipal planning which we have noted should be defined in the Act itself.

4.9 We have received numerous submissions arguing that provincial intervention in municipal planning should take place only on the basis of established provincial policy, clearly expressed and stated in advance. It has also been suggested that municipal planning cannot operate effectively in the absence of an overall provincial development plan. We note that, as a normal characteristic of multi-faceted government, individual provincial policies often conflict with each other, reflecting conflicting social and economic needs. In addition, there may be practical reasons to assume that a comprehensive provincial development plan is not an early prospect. The government may not be able to establish all of its relevant policies in a clear and coherent fashion, in advance of specific municipal proposals. However, in the absence of such clear-cut policies, the Province must still exercise its responsibilities in ensuring provincial interests on a day-to-day basis. The major concern is that provincial intervention be exercised in a cogent and disciplined fashion.

4.10 If the Province is to shift from an approval to a veto role, it is particularly important that municipalities be afforded the benefit of provincial advice and assistance as to existing and emerging provincial interests and concerns. We think there is a major provincial responsibility for providing such planning assistance and guidance when municipal planning proposals are being formulated, rather than when they are being reviewed, as is more or less the case today. Much greater emphasis should be placed on the production and

circulation of provincial guidelines outlining major areas of provincial policy concern and technical and procedural aids. They should be presented in a systematic coherent way which identifies them as the Province's formal municipal planning guidelines.

4.11 There may be occasions where it is in the provincial interest to incorporate in a municipal plan certain provisions of a provincial concern. An illustration could be the need to include a provincial policy concerning agricultural land in a specific location, or perhaps a specific transportation facility or provincial development project. In such cases, it would normally be assumed that the matter had been discussed with the municipality prior to the adoption of the plan. However, where a municipality chooses not to include specific provincial policies in its plan, the government should have a reserve power to make sure that all relevant provincial interests are provided for. The Minister's authority to veto parts of a municipal plan that conflict with stated provincial interests should include the power to notify the municipality of particular provisions the Province wishes to have included in the plan. In the event that the municipality does not include these particular provisions in the plan, the Act should provide for the Ontario Municipal Board to hold a hearing on the matter and submit its recommendations to the Cabinet for a final decision.*

Assignment of planning responsibilities

4.12 As a general principle, any municipality should be able to undertake the planning actions it considers appropriate, subject to a provincial veto of specific actions violating provincial interests. In a technical sense, this means that the Province should transfer to municipalities its own authority to approve the various planning instruments. In reality, we see this as allowing municipalities to carry out planning as if they are autonomous, with their actions to be interfered with only when a provincial interest is at issue. We assume, however, that it will not be in the provincial interest to grant planning autonomy automatically to all municipalities, and that the assignment will take place on a selective basis. Not all municipalities will have the necessary organizational resources or willingness to assume autonomous planning authority.

4.13 Under existing legislation, the Minister now has the authority to delegate to municipalities any or all of his planning approval powers (excluding the approval of zoning by-laws, which is a Municipal Board responsibility). Despite repeated requests from some municipalities, the provincial government has been reluctant to single out individual municipalities to receive delegated approval powers, or to establish readily measurable criteria of ability or competence for this purpose. We believe the onus for assigning planning responsibilities should be reversed. Rather than assuming that the Minister will be able to establish why a given municipality should receive approval authority, there should be an assumption that any municipality should have this authority unless the Minister can establish to his satisfaction why the municipality should not have it.

*This is part of our broader proposals concerning the Ontario Municipal Board in Chapter 10.

4.14 The distinction is important. It should be easier for the ministry to establish why the provincial interests will be adversely affected if a given municipality has autonomous planning authority, than to establish, in advance, objective criteria which probably cannot take into account the widely diverse circumstances of municipal planning in the Province. We propose therefore that the Act require the Minister to assign planning authority to all municipalities, except where he believes that such assignment is inadvisable from a provincial standpoint. The exclusion of individual municipalities should take place in a formal way, by statutory order, and the Minister should be required to specify in the order his reasons for such exclusion so that the debate, if there is one, can be conducted openly. (For local municipalities within the two-tier planning system, which represent a special case, we are making alternate proposals in Chapter 8.)

4.15 If planning authority is to be assigned to municipalities as a general rule, provision must also be made for these powers to revert to the Province where it finds that the provincial interest is adversely affected by the assignment. The Act should provide the Minister with the authority to recall the powers, either in whole or in part, where he finds that a municipality has demonstrated an inability or unwillingness to exercise the authority satisfactorily. Recall of planning authority should take place in a formal manner by statutory order, and the Minister should be required to specify in the order his reasons for calling back the authority.

Rural zoning

4.16 The zoning of rural land presents a particular case where provincial interests can be seriously affected if municipalities are unable or unwilling to exercise a reasonable level of control over development. The Minister is now able to freeze such land by means of statutory orders under Section 32 of *The Planning Act*. Typically, these provide that no change in use or only limited changes may take place until the order has been amended or revoked. Such orders are now in effect in many municipalities, and it is the Ministry's declared intention that the orders will be lifted when the municipalities concerned adopt appropriate zoning by-laws. However, the use of Section 32 orders presents serious problems in removing from the municipality the administration of its own land use controls, and in the awkwardness of securing minor changes through the use of centralized ministerial machinery.

4.17 There is no doubt that in those cases where the Province decides it is necessary, the power to freeze agricultural or other rural land should be retained, and Section 32 provides an effective way to do this. Section 32 orders are not, though, an appropriate way to carry on normal rural zoning, where the appropriate action is not so much a matter of imposing an absolute freeze on land use changes, as of specifying the minimum standards for considering changes. We believe the Section 32 powers should be retained more or less as a last resort, but that there should also be an instrument which provides a basic minimum level of rural zoning throughout the Province.

4.18 For this purpose, we propose that the Minister impose, universally, a "base level" rural by-law providing minimum rural zoning standards. He should be empowered to exempt from this by-law, by regulation, those municipalities

that already have adequate by-laws, that adopt such by-laws in the future, or where for particular reasons such by-laws are not necessary or appropriate. The Act should provide that applications to amend the Minister's by-law would be processed by local councils as if they had enacted the by-law in the normal way, and that such amendments be subject to provincial veto. Unlike normal by-laws, however, the Minister's universal rural by-law should prevail over local official plans where conflict exists, and municipalities should be required to amend their official plans in such cases.

Rural consents

4.19 Provincial interests can also be seriously affected by the unreasonable granting of land separation consents in rural areas. The Ministry now monitors the activities of land division committees and committees of adjustment on a selective basis, and the Minister can appeal to the Municipal Board any specific consent decisions which are not in accordance with the Ministry's consent guidelines. We have concluded that as a practical matter this does not give the Province an adequate way to secure provincial interests in the development of rural land.

4.20 We propose in Chapter 5 that the responsibility for formulating rural consent policies should rest generally with county and regional councils. We are also proposing that, like every other kind of municipal planning decision, the consent granting power should be dependent on the establishment of a satisfactory planning policy base for that purpose. As with rural zoning, there should be a provincial "base level" rural consent policy, to be applied in those counties or regional municipalities where a satisfactory consent policy is lacking. The Act should be amended to require the Minister to establish and impose a provincial rural consent policy on a universal basis, and allowing him to exempt from this policy, by regulation, those counties and regional municipalities that already have suitable consent policies, that adopt such policies in the future, or where for particular reasons, a rural consent policy is not necessary or appropriate. The responsibility for administering the provincial consent policy should rest with the county or regional councils, operating through their land division committees. The imposition of a provincial policy would be designed not to give the Minister supervision over individual consents, but to provide a consistent province-wide basis for granting consents in accordance with provincial rural land use policies.

Ministerial discretion

4.21 Most of the Minister's present powers under *The Planning Act* are discretionary; he may exercise them or choose not to exercise them as he sees fit. For some of these powers (as in Section 32 orders) the Minister's discretion is exercised through regulations or other statutory orders, but most of his discretionary authority can be exercised within broad limits which are not precisely defined in the legislation. This was perhaps the most appropriate legislative structure in the period when municipal and provincial planning were evolving to their present status. It was also probably the most expeditious way for the province to carry out its supervisory/approval role. We are not certain that this is the case today.

4.22 There is little doubt that to carry out his responsibilities the Minister should be in a position to exercise discretion on a number of matters; a system that is too rigid would be unworkable. But if there is to be a general shift to the

principle of local autonomy in planning matters, it seems to us that the limits of ministerial discretion should be clearly expressed in legislation. Just as we feel that the basis for provincial intervention in municipal planning should be embedded in the Act itself, we also feel that for those matters on which the Minister is to act in a discretionary manner, the way in which the discretion is to be exercised should be spelled out. The municipalities, their inhabitants, and the other parties affected by municipal planning decisions should have the right to know the rules. The most effective way to spell out the rules is to do precisely that — to make them formal rules.

4.23 As a general principle, where discretion is to be exercised, it should be done through regulations or other statutory orders. We indicate in various sections of the report specific ministerial powers which we think should be exercised through regulations, and we propose that defining the limits of ministerial powers through regulation be adopted as a general operating principle.

4.24 We also believe that where the Minister makes discretionary decisions, he should be required as a general rule to state the reasons for his decisions. If, for example, the Minister chooses to limit a municipality's planning autonomy in certain respects, the municipality and its residents should know why their autonomy has been circumscribed. Similarly, both the proponents of development proposals and their opponents are entitled to know why the Minister has chosen to act in a certain way. The Act should require that any decision to reject or modify a development proposal by either the Minister or a municipality is to be accompanied by a formal statement of the reasons for that decision.

Crown rights

4.25 We have received many submissions that the programs and direct actions of the federal or provincial governments can have a significant effect on a municipality's planning program and should be brought within the jurisdiction of municipal planning under the Act. The question of federal crown rights, as a constitutional matter, is outside our terms of reference. The provincial government now customarily consults local municipalities concerning its own development projects, and generally seeks the necessary official plan or zoning amendments which may be required in particular cases. This is a matter of practice, rather than a statutory requirement.

4.26 Two different kinds of provincial facilities should be distinguished. One are those facilities which are location-specific, that is where a particular provincial program or policy requires certain facilities to be established in specific locations. Typical examples would be provincial correctional institutions, highways or other transportation facilities, or provincial development projects. It would be inappropriate to bring under municipal planning control the type of provincial facility for which the specific location is a matter of provincial policy. There should however be suitable consultation with the municipality prior to their establishment, so that they can be taken into account in the municipality's planning program.

4.27 The other kind of provincial facilities are those required for the administration of provincial programs, for which specific locations are not directly a matter of provincial policy. These would include provincial office buildings, retail stores, maintenance yards, etc. These are not significantly different from similar private or municipal facilities and should be covered by normal municipal planning policies. We propose that the Act be amended to require that this kind of provincial facility is placed within the jurisdiction of municipal planning instruments under the Act.

5 municipal planning authority and organization

5.1 We have proposed in Chapter 4 that the Province allow municipalities the basic power to make their own planning decisions. To exercise local planning autonomy, municipalities should have final authority on all of their own planning instruments: municipal plans, zoning by-laws, subdivision plans, consents and neighbourhood improvement or community renewal plans. This proposal is premised on the assumption that all municipal planning actions will be subject to provincial veto on matters of direct provincial concern, and that this veto will be expressed in a formal manner reflecting the authority of the Minister or the provincial government as a whole. We also assume that planning authority will be assigned to municipalities on a general basis, but will be withheld selectively from those municipalities where autonomous authority is not appropriate.

Delegation

5.2 If municipalities are granted the authority to finalize their own planning actions, this authority should rest with the elected council. This is an important principle. However, there is nothing intrinsically wrong with having this power delegated to committees of the council, or, for limited purposes, to appointed committees of adjustment or land division committees. Such delegation should take place on the basis of formally adopted council policies which establish the exact scope of the powers being delegated, the basis on which these powers may be recalled by council, the procedures for reporting the committee's activities to council, and the procedures for appeal to council of the committee's decisions.

5.3 The Act now allows councils to delegate their approval powers to appointed officials (except for official plans), but sets no restrictions on the scope of the permitted delegation. It is certainly appropriate for appointed officials to be given the authority to execute council policies; the approval of subdivision plans for example, within established council policy guidelines, is a proper exercise of delegated council approval powers. It is not appropriate, however, for appointed officials to exercise approval powers which involve the establishment of municipal policies; nor is it appropriate that they have the responsibility for holding public hearings and receiving public submissions on behalf of the council. The Act should specify that the delegation of council approval powers to officials will be restricted to actions falling within established council policies, and is conditional on the adoption of a formal delegation policy outlining the scope of delegation and the procedures to be employed.

Planning boards

5.4 There is also nothing intrinsically wrong with councils being able to utilize the services of planning boards or other advisory bodies. There is much that is wrong, we believe, either in making it *mandatory* that planning boards be

employed (as is now the general case) or in *forbidding* their use (as is the case in most of the regional municipalities). We have canvassed the variety of arguments put forward for and against the concept of planning boards. We can understand the particular function they served in earlier years and their usefulness in many circumstances today. Nevertheless, we have concluded that whatever the previous merits or present utility of planning boards, in the system we propose it is only the council that can legitimately exercise planning authority. There is no particular provincial interest to be served by either having or not having planning boards. We propose therefore that any council should be free to determine for itself whether it wishes to appoint a planning board, or wishes to dissolve the board already in existence. This right should also be extended to local councils within all the regional municipalities and, for that matter, to the regional councils themselves. Councils should also be free to establish other kinds of advisory bodies and to co-opt non-elected persons to their planning committees if they choose, so long as it is clear that the planning decisions are being made by persons elected to do so (except for committees of adjustment and land division committees which are discussed below).

5.5 Where a council chooses to appoint a planning board, it should be free to establish the board's composition and to appoint its members without the Minister's review. It should be free to define the board's duties and the procedures under which the board will function. Because a council should have a free hand to organize its own planning arrangements as it chooses, the maximum term for planning board members should be limited to the life of the council which appointed them.

5.6 At present, planning boards are essentially advisory bodies with a certain degree of statutory authority. They are assigned the responsibility for preparing a municipality's official plan, and in certain circumstances their recommendations can be overturned only by a two-thirds council vote.* We think it is wrong both in principle and in practice for advisory bodies to possess any statutory authority. The authority for planning decisions should rest solely with the municipal council, and should not be constrained by the actions of an appointed advisory body. While we propose that councils should be free to determine their planning board's duties, they should not have the power to delegate approval authority or any other kind of statutory authority to the board. There should also be no statutory obligation for a council to ask its planning board for advice on any particular matter or kind of matter, or to follow such advice if it is provided.

Minor zoning adjustments

5.7 Minor zoning adjustments represent a special kind of planning decision. The system of using council-appointed committees of adjustment to deal with variances and other minor adjustments of the zoning by-law provides an expeditious way of overcoming the distortions, hardships and inequities which

*In the case of an official plan amendment initiated by a council the Minister can ask for a planning board report. If the board does not concur with the proposal the Minister may not approve the amendment unless it has been adopted by a 2/3 vote of council members.

could result from rigid application of the by-law in particular circumstances. While this responsibility can be seen theoretically as part of the broader municipal zoning authority that should be assigned to local councils, it is carried out effectively and economically by independent bodies which are required to stay within the general intent and purpose of the by-law, as the Act now provides.

5.8 Proceedings of committees of adjustment should be subject to the same kind of process requirements that apply to all municipal planning actions discussed in Chapter 9; beyond this we see a need for only one change to the present system. Where zoning by-laws are in effect, the Act now permits councils to establish committees of adjustment, but does not require them to do so. Where municipalities choose to exercise zoning powers, there should be a corresponding obligation to administer the by-law expeditiously, and all municipalities with zoning by-laws should therefore be required to establish committees of adjustment for the purpose of dealing with minor adjustments to these by-laws.

Consents

5.9 Granting land separation consents is another special case. These are a form of land subdivision which should in principle be subject to the same municipal council authority that is applied to subdivision approvals, and should be subject to the council's subdivision policies. The legislation now provides for the consent approval function to be carried out by committees. In the case of municipalities that had an approved official plan in place prior to 1974, separation consents can be granted by the local committee of adjustment. For all other municipalities (except in unorganized territories) consents are granted by County or Regional Land Division Committees.

5.10 Committees of adjustment and land division committees are essentially independent bodies whose members are appointed by their respective councils. In dealing with consents they are not formally required to adhere to the local official plan. But if this question is raised on appeal to the Ontario Municipal Board, the Board usually decides that the official plan policies are to be followed. The committees ordinarily adhere to any consent policies that have been established by the relevant council, and impose local, county or regional requirements, such as financial levies, road widenings and park dedications. Committee decisions can be appealed to the Municipal Board by any interested parties, including the municipal councils or the Minister.

5.11 There is considerable difference of opinion as to how well this system works. In urban municipalities, the committees of adjustment appear to be administering local council policies satisfactorily and there is relatively little opposition to their exercising consent approval authority. There is less agreement with respect to the county land division committees. In some areas, there is a strong feeling that the county committees are operating effective control policies for the rational use and conservation of rural land, while in others there is concern that the policies are inadequate or that the interests of the local municipalities are not suitably observed.

5.12 The placement of the authority to grant consents should in principle be no different than for subdivisions, zoning by-laws and official plans. That is, the authority should rest with the municipal council. Nevertheless there is a well established tradition of using committees for this purpose, the procedures are well organized, and it would probably be cumbersome in most situations for councils to deal directly with consent applications. Employing relatively independent committees is a useful way to administer the granting of consents, but the Act should make clear that the committees are exercising a power delegated to them by their councils. County and regional councils should be allowed to determine for themselves whether they wish to continue with land division committees, but should not be required to do so. Local councils should be allowed to determine for themselves if they wish to delegate the consent granting authority to their appointed committees of adjustment, but should not be required to do so. As there is generally little dissatisfaction with the concept of the committees *per se*, we would expect that in most cases the committees would remain in place, but a council should have the option of assuming the consent granting power directly when it is not satisfied that the appointed committee is operating suitably.

5.13 As we understand the problem, it is not so much whether committees are used, but the basis on which they exercise the consent power and their immediate relationship to the councils. Any body with the authority to grant consents should do so on the basis of defined policies that have been established through proper procedures by the council. Many municipalities now have such policies, but not all. Our proposal in Chapter 4 that the Minister be required to establish a base-level rural consent policy is designed to fill this vacuum.

5.14 A second problem is to ensure that committees adhere to their council's consent policies. Today, the councils are advised of the committee decisions and may appeal them to the Ontario Municipal Board, as is the case with other aggrieved parties. We feel this is a distortion of the proper relationship between the committee and its council. The Act should provide for committee decisions to stand unless the relevant council has formally acted to alter the committee's decision within a stipulated period, say, 30 days. The committees should be required to provide the councils with their reasons for the decisions, as is now the case, and with all of the reports and other written material that were available to the committee when it made its decision.

5.15 In addition to adhering to its council's consent and planning policies, it is important that county and regional land division committees take account of the planning policies of local municipalities within their jurisdiction. For this purpose we propose that the Act specify that in reaching their decisions, land division committees must have regard for the relevant planning policies of affected local municipalities. Local municipalities should retain their present right to appeal to the Ontario Municipal Board those committee decisions to which they object.

5.16 We are proposing in Chapter 9 that consents be subject to the same requirements for notification, hearing, reasons for decision, and appeal as all other planning decisions. It should not be necessary for a council which chooses to overrule a committee decision to hold an additional hearing on the matter. Persons who are aggrieved by the council's decision should have the same appeal rights as are available with respect to the original committee decision.

5.17 A final question is the assignment of jurisdiction to county or regional land division committees on the one hand and local committees of adjustment on the other. We have concluded that in the final analysis there are really two kinds of separation consents. In rural areas, consents are undoubtedly a means of subdividing undeveloped land for development purposes; they are in fact the predominant vehicle for permitting subdivision, and account for far more residential lots on an annual basis than do conventional subdivision plans. In urban areas, however, consents serve two other purposes. They provide an expeditious way of making relatively minor property boundary adjustments and they are also frequently used to facilitate development of small-scale "infill" sites. We think the distinction between urban and rural consents is an important one that should be reflected in the machinery for dealing with them.

5.18 The principle of dealing with rural consents on a broad area-wide county or regional basis is sound. The topic of primary consideration is the use of agricultural land for non-agricultural purposes, usually urban or semi-urban development. We believe this is an issue which extends beyond the interests of the individual rural township, and we have little doubt that the establishment and administration of suitable policies concerning agricultural and rural land should be effected on a broad area-wide basis. Such consents are properly the responsibility of the county or regional governments where such exist. Similarly in the north, consents can come under land division committees having extensive territorial jurisdiction. (This is dealt with in Chapter 16.)

5.19 In urban areas, the consent matters which require consideration are of concern primarily to the local municipality. There are likely to be few if any broad area-wide interests at stake, and these can be protected by the process of notification and appeal. There is little reason, except possibly local unwillingness to act, for assigning the responsibility for urban consents to any government other than the local municipality.

5.20 As a matter of principle, urban consents should be dealt with by local municipalities and rural consents by counties or regions. However in practice, the definition of "urban" and "rural" can present difficulties, particularly because of the problems of unrevealing municipal nomenclature. (For example, the fact that towns and even cities in some of the new regional municipalities can have extensive rural areas, or the fact that many townships are largely urban in character.) There can be no hard and fast rule for defining in advance which kinds of municipalities are essentially rural and which are urban, and thus pre-determining whether the consent authority should rest with the county or regional council or with the local municipality.

5.21 The determination of which municipalities are urban and which are rural can best be made by the county or regional council. As a federation of local municipalities, the county or region would normally be in a better position than the Province to understand local circumstances, and would thus be the appropriate body to determine where the consent granting authority should rest.

5.22 Our proposal concerning consent authority in regional municipalities and restructured counties is discussed in Chapter 8. In other counties we propose that the consent authority be assigned directly to the county council, which should then have the authority to determine whether the power will be further assigned to given local councils.* This determination should be made on the basis of an adopted council policy that defines urban and rural areas within the county for consent purposes. Any local municipality to which the consent authority has been assigned by the county council should be allowed by the Act to request the county council to recall the authority if it decides that this is appropriate.

5.23 We believe that our proposals to distinguish between urban and rural consents in the allocation of consent granting authority, and to bring this authority directly under municipal council jurisdiction, should help to rationalize this important municipal planning function. We also deal in Chapter 13 with the statutory conditions under which a municipality may require consents to separate land, and in Part III we are proposing a number of specific improvements to the system of granting consents.

*In either case, the council concerned should make the decision whether the consent power will remain with the appointed committee or will be exercised directly by the council, as described in paragraph 5.12.

6 municipal plans

6.1 The municipal plan, or "official plan", is the central element of the municipal planning process in Ontario. There are widespread concerns about the nature of the municipal plan, its scope and its content; there is also a general conviction that the Act should clarify the role of the municipal plan and the way it operates. These questions are part of a broader concern with the nature of municipal planning in the Province. We deal here with the main issues that are raised — the question of mandatory municipal planning; the form, scope and content of municipal plans; their legal status; and the monitoring and review of plans.

Mandatory planning

6.2 It has been urged on us that municipal planning be made mandatory, that municipalities be required to engage in planning. We accept that "planning" is a central function of municipal government in that municipalities should be expected to identify the objectives of their policies and programs, and to assess the consequences of their actions against their stated purposes. We see no suitable way, however, of making planning a mandatory function, at least not in the comprehensive sense implied by the way the legislation is applied today. Nor can we identify an overriding provincial interest in requiring all municipalities to plan, as the term is commonly understood. What is necessary is that when municipalities engage in planning activities, such as development regulation or subdivision approval, they do so within a suitable framework. The exercise of any statutory planning function should be based on stated planning premises. We do not think that planning itself should be mandatory, but we propose, as a matter of principle, that no planning authority be exercised except on the basis of formally adopted municipal planning policies.

6.3 For a municipality to engage in planning today under the Act, it must draw up a "plan" that is comprehensive in coverage. Ordinarily this is what the municipal planners expect to do and what the Province requires them to do. Much of the time and energy spent in municipal-provincial negotiations is directed toward securing documents that satisfy the Ministry's concept of comprehensiveness. The central notion is that the document must be complete, that it must deal with all of the conventional matters relevant to planning, and must set out as fully as possible the municipality's total intentions concerning the community's development.

6.4 We accept that a municipality's plan should provide a framework for its planning and development program, but seriously question the assumption that a comprehensive framework is the only basis on which a municipality can or should plan. For many municipalities, certainly the larger ones, this is prob-

ably the most effective or convenient way to plan, but for others it may not be. Particularly for the smaller municipalities, the requirement to plan comprehensively may be so burdensome as to seriously impair their ability to achieve what should be their central purpose: to have a suitable basis for their specific planning actions, such as zoning or approving subdivisions and land separations. For these purposes, simple statements setting out the municipality's objectives, procedures and standards should be sufficient.*

6.5 The Act does not actually prevent municipalities from planning by way of individual policy statements; such statements might well qualify under the present definition of a plan in the Act — "a program and policy, or any part thereof". In practice, however, individual policy statements have not been recognized as acceptable plans. We propose that the Act be revised to make it clear that municipalities may prepare a total plan in the conventional sense, or individual policy statements for the specific planning activities they wish to engage in.

Provincial approval

6.6 We have already stated that we do not think it is necessary, in order to secure the Province's interests, for municipal planning policies to have to receive provincial approval. We have concluded that the process of obtaining formal plan approval has had serious detrimental effects on the municipal planning system. In essence, we have found that the conduct of municipal planning, which in many ways has become a matter of process for the sake of process, derives largely from the requirement for provincial approval. This emphasis has distorted the operation of municipal planning and has impaired its effectiveness in many instances. By concentrating on the structural requirements of the system, the official plan concept serves increasingly to obscure the substantive questions with which planning should be concerned. We have reached the conclusion that the notion of "official" plans, in the sense of plans requiring provincial approval, should be dropped.

6.7 We feel strongly, as we discuss below, that a municipality's planning policies should have formal status. Our quarrel is almost entirely with the notion of "official" as being defined to mean provincial approval. Because the term "official plan" is so clearly encumbered with the notion of provincial supervision and approval, we think it is important to change the terminology.

Municipal plans and planning statements

6.8 Our proposal is that official plans be "deofficialized" and renamed "municipal plans". We propose also that individual planning policy statements be formally recognized in the Act under the term "municipal planning statement". For most purposes, these two terms should be interchangeable. A municipality wishing to exercise planning authority need not necessarily adopt a municipal plan, but no statutory authority should be exercised under the Act unless the municipality has formally adopted a municipal planning statement relating to that activity. Where more than one planning statement

*Hodge, *Planning for Small Communities,* Background Paper 5. (Planning Act Review Committee, 1977)

has been adopted, a municipality's various planning statements should be consolidated periodically so that the public may be aware of the municipality's total planning policies at any given point in time.

6.9 Municipalities are not required by the existing Act to have a formal planning base for all their planning actions. They may adopt zoning by-laws, process subdivision plans and grant consents without having a plan. Our proposals envisage that municipalities will assume autonomous planning powers. If they are to have statutory planning authority, it should be mandatory that they adopt plans or planning statements as a basis for exercising this authority.

6.10 Obviously, it will be inexpedient to close the system down and bring all subdivision, zoning and consents to a halt unless and until a municipal council adopts a plan or a relevant planning statement. The system must be kept going during the transition to municipal planning autonomy. We are proposing three ways to prevent a vacuum from occurring in the exercise of planning control: 1) In the first instance, we have suggested that planning approval authority should be assigned to municipalities selectively; where the Minister finds assignment not expedient, it should not take place. We would assume that where a municipality lacks a suitable planning policy for zoning or subdivision approval, the Ontario Municipal Board or the Minister would continue to exercise approval powers. 2) We have also proposed that the Minister establish a base-level zoning by-law and rural consent policy in all municipalities that do not have a minimally acceptable level of control. 3) Finally, we propose that any persons who are aggrieved by a council's failure to adopt a plan or planning statement should be able to lodge an appeal with the Province, just as they can do now for an amendment to an official plan or zoning by-law under Sections 17(3) and 35(22) of the Act.

6.11 There is a related problem that municipalities may already have planning policies, concerning subdivisions, zoning or consents, which have become antiquated or obsolete. To cover this situation we make proposals below on the mandatory review of municipal plans.

Scope and content of plans

6.12 We have received many different views concerning the desirable scope and content of municipal plans. Some urge that the content of plans be specified in the Act, others that this be left to the municipality's discretion. It is argued that a plan should deal only with matters that are a direct municipal statutory responsibility. On the other hand it is suggested that municipal plans should contain policies on all matters affecting the social, economic, physical or environmental well-being of the community.

6.13 The content of municipal plans is very much a function of the nature of planning. By convention, most plans today deal with three main classes of material: the municipality's functional programs (transportation, services, parks, etc.); its development policies; and its general policies on the physical or natural environment and the community's social and economic situation. The question is whether the conventional scope for municipal planning, or some alternative, should be formalized in the legislation.

6.14 We approach the matter from two basic premises. First, the question of stipulating plan content must ultimately stem from the Province's own interest in what municipalities do or do not do. Except for the plan's relation to specific provincial interests, we see no strong provincial interest in stipulating plan content. Second, the matters contained in plans must somehow be related to the municipality's ability to deal with these matters in an effective way. The question to be considered is not so much which matters municipal plans deal with, but *how* they do so. Our view is that municipalities should have considerable discretion in plan content, but that the way in which plans are used should be circumscribed.

6.15 Our general principle concerning the nature of plans is that municipal planning objectives should be reasonable and the policies attainable; there should be a realistic expectation that the policies can be carried out. Planning should also be accountable; it should be completely clear what the plans and policies actually are. This means that there should be a clear definition of the objectives being sought, an adequate description of the actions to be taken, and a reasonable understanding of the likely consequences of these actions.

6.16 The present definition of a municipal plan ("a program and policy . . . designed to secure the health, safety, convenience or welfare of the inhabitants") is, to paraphrase a recent court decision relating to *The Municipal Act*, so general as to say nothing. This definition seems to us to serve no useful purpose in dealing with either the content or scope of municipal plans, and should be abandoned.

6.17 We propose instead that a municipal plan or planning statement should establish the basis for the specified planning actions a municipality proposes to carry out. The Act should stipulate that municipal plans and municipal planning statements must do the following:

- Specify the particular objectives being sought.
- Indicate how the objectives are to be attained (for example, by establishing regulations, programs, or facilities); the standards or specifications to be employed; and the procedures for administering the instrument or program in question.
- Establish the procedures for periodic review of the policy or program, and the basis on which a need to change the policy or program will be determined.
- Establish the procedures for public information and public consultation in the particular matter.

Social and economic objectives

6.18 These are the necessary elements of a responsible planning process, and they should constitute the mandatory scope of municipal plans and planning statements. Applying these requirements to a municipality's functional plans and to its planning control instruments should be relatively straightforward, but perhaps not with respect to policies involving generalized social or economic objectives. For these latter objectives, a municipality should be expected to identify the problems it is concerned with; to establish that it is feasible to deal with the problems with the available tools; and to explore the consequences of either proceeding or not proceeding along the proposed lines.

6.19 We have been urged to recommend that municipal plans be restricted exclusively to quantifiable objectives so that the municipality's performance can be measured. This would be a clean and neat way of making municipal planning behaviour firmly accountable, but it seems to us to be unduly restrictive. It is not wrong for municipalities to pursue objectives that are not totally within their own reach or under their own control. Broad objectives that involve strategies as well as specific actions are a legitimate part of municipal planning.

6.20 The planning tools for securing social or economic objectives are mainly controls on physical development and the provision of public services and facilities. In using these tools, municipalities should be obligated to have regard for the relevant social and economic considerations, and to take account of the likely social and economic consequences of their use. These obligations should be part of the normal content of municipal plans or planning statements. But if the number of matters to which regard is to be had is not limited in some way, a municipality may well end up immobile, since many economic and/or social considerations can be expected to conflict in some degree with each other.

6.21 It is necessary, therefore, that municipalities sort out their social and economic priorities. They should be expected to identify those social and economic concerns that are particularly important, and to establish how conflicting concerns will be reconciled. They should also be expected to determine whether there will be conflicting social and economic consequences from the proposed actions. We recommend these considerations as a reasonable constraint on the incorporation of social and economic objectives in the municipal planning process.

6.22 Some restriction should also be placed on the use of social or economic strategies. Strategies are by definition speculative; they are based on the premise that if certain things are done, certain other things will probably happen. Strategies are a legitimate part of municipal planning. However, responsible planning which takes account of consequences should be concerned with what could happen if proposed strategies do not work out as expected, if circumstances change, or if the predictions were inaccurate. Municipalities that employ social or economic strategies should be required to establish what will be done if the proposed strategy does not work out.

6.23 Municipalities should also be constrained in their pursuit of social and economic objectives by the Province's own concerns in these areas. For example, we recommend in Chapter 14 that as a matter of provincial policy municipalities not be allowed to engage in exclusionary or socially-restrictive housing practices. If this recommendation is accepted, municipalities should obviously not be allowed to set development goals or standards which will have such a result. Nor would it be reasonable for the Province to allow municipalities to pursue economic or fiscal objectives that would interfere with provincial goals for the availability of affordable housing. It would probably not be feasible to stipulate in the legislation such specific limitations on the scope of municipal planning; rather it is in this kind of situation we would expect a provincial veto power to be used.

Financial considerations

6.24 It has been suggested to us that municipal plans be restricted to proposals that are demonstrably within the municipality's financial capability. This would be reasonable in principle, but difficult to apply in practice. It is almost impossible to project a municipality's long-run financial capability except in the most general terms, since many of the factors involved cannot be determined in advance — for example, Municipal Board constraints on future borrowing; changes in provincial and federal grants and funding programs; the tax policies of future councils. We do not think that financial feasibility should be made a specific requirement in establishing the scope of municipal plans. We suggest instead that municipalities be required to review periodically the financial feasibility of the proposals in their plans, and to indicate how the proposals will be changed or adjusted as financial circumstances dictate.

Environmental considerations

6.25 Most municipal plans of recent years deal with environmental issues of some kind, with the coverage usually limited to matters concerning natural hazards, pollution and esthetics. The range of environmental concerns is broader in the currently emerging regional plans, a number of which place considerable emphasis on policies for the protection and management of major aspects of the natural environment. We have received numerous submissions that it be made mandatory that municipalities deal with environmental matters in their plans. A background study prepared for the committee recommended that natural environment considerations be explicitly required in all municipal plans, and specific recommendations were made concerning the environmental content of plans, and municipal environmental management and control.*

6.26 Our basic premise concerning the nature of municipal plans leads to the conclusion that notwithstanding the importance of environmental considerations, it is no more justified to mandate a natural environment component in every municipal plan than it is to mandate that all municipal plans must deal with housing policies, transportation, agricultural land, economic development, or any other particular matter of major significance. For our purpose, the key question concerning the natural environment is the same as for other important issues: it is the extent of the provincial interest in the matter and how it is to be dealt with. The provincial interest in the natural environment may be conditioned by inherent conflicts relating to other provincial interests — between social equity and environmental quality, for example, or between economic development and water quality. We cannot establish *a priori* that there is more reason, from a provincial standpoint, to elevate natural environment concerns to the top of the policy hierarchy than there is to elevate housing concerns. We cannot establish an overriding provincial interest that would dictate that a natural environment component be made mandatory, or that would prescribe the content of that component.

6.27 We are recommending elsewhere, in connection with *The Environmental Assessment Act* (Chapter 17), that municipalities be made responsible for certain environmental approvals under that Act. This proposal would be conditional on their having established a suitable planning policy concerning

*Lang and Armour, *Municipal Planning and the Natural Environment,* Background Paper 3 (Planning Act Review Committee, 1977)

the natural environment. The proposed authority should provide considerable incentive to municipalities to include a natural environment component in their plans. We assume that municipalities interested in dealing with the natural environment will do so, as is indicated by the current regional plans. We are far from certain that mandating an explicit natural environment component will secure effective implementation of such policies in municipalities that lack the interest.

6.28 We are not suggesting that municipalities should be able to choose to ignore natural environment concerns in their planning. As is the case with social and economic considerations, it is essential that municipalities *have regard* for natural environment considerations in the development of their planning policies, and that they *take account* of the environmental consequences of their proposed planning actions. We propose that this be made a mandatory requirement in the Act.

6.29 This does not, however, represent the total extent of municipal planning concerns with the natural environment. Municipalities must be able to protect and manage their natural environment resources. We are making specific recommendations elsewhere for this purpose, including the use of holding by-laws for regulating environmental impact and the acquisition of development rights of environmentally-significant properties. The exercise of these powers directed specifically to natural environment concerns would be conditional on the municipality having established appropriate planning policies covering the natural environment.

6.30 Our three basic proposals — that municipalities be required to have regard for natural environment concerns in their planning; that they be allowed to exercise particular development control powers explicitly directed to protecting the natural environment; and that in certain circumstances they be allowed to engage in environmental assessment on behalf of the Province — seem to us to reflect the appropriate degree of provincial interest in the matter. It will allow the provincial government to intervene in specific municipal planning actions concerning the natural environment that are offensive from a provincial standpoint, without necessarily elevating natural environment concerns to a level higher than the Province considers appropriate.

Legal status

6.31 In addition to requiring provincial approval, official plans today have a certain degree of legal force. Section 19 of the Act provides that no public works may be carried out and no by-laws adopted that conflict with the provisions of an official plan. This legal status for official plans is in many ways misleading. It is purely negative in that it does not require municipalities or other public bodies to carry out works or programs necessary to achieve the plan objectives. It is incomplete; it likely does not restrict municipalities from carrying out programs or undertakings of a non-structural nature, and does not restrict the provincial and federal governments in carrying out their own works. It is also indirect; private activities are governed not by the plan but by the regulations (such as zoning) which must themselves not conflict with the plan. There is furthermore a substantial qualification: under Section 35(28) of the Act, any zoning by-law approved by the Ontario Municipal Board is automatically deemed to be in conformity with the official plan.

6.32 The legal status afforded by Section 19 produces misleading public expectations that the municipality must act in a positive way to carry out the plan, which is not the case. It can lead to inflexible plans that have to be tailored to legalistic considerations, often at the expense of substantive planning considerations. The conformity provision often serves to turn the municipal plan into a legal instrument rather than a planning instrument. The shape of the municipality's planning policy can be seriously distorted by the Section 19 provision. The inherent inflexibility of the official plan may lead councils to exclude from the plan important policies or programs that they may want to be able to alter later as circumstances dictate, without going through a cumbersome amendment process.* Because the plan should, in a formal sense, contain only provisions for which the legal conformity of subsequent actions can actually be determined, significant planning formulations are often kept out of the plan, or are expressed as bland "motherhood" generalities.

6.33 There is no doubt that Section 19 today gives land owners a certain degree of protection against rapid changes in municipal policy, if only because serious amendments to official plans can require as much or more time to bring into force than was the case for the original plan itself. But the cost of providing this assurance is high. We think it can severely inhibit municipal councils from establishing policies they feel they were elected to achieve.

6.34 Rather than stipulating what a municipality may *not* do as a result of having a plan (which is what Section 19 provides), it would be better to stipulate that a municipality must have regard to its planning policies in what it *does* do. We have already proposed that municipalities be required to have a formal planning base for any planning activities they engage in. We also recommend that the present Section 19 provision be deleted from the Act, and propose instead that municipalities be required to have regard for their formally adopted planning policies in all their planning actions. It is an accepted legal convention to require that public bodies have regard to specified policies. Our proposed requirement is capable of legal interpretation and enforcement. We think it is the appropriate means to define the municipality's obligation to its own planning policies.

6.35 In making a specific planning decision, a municipality may find it necessary on occasion to depart in some way from a standing policy without necessarily inaugurating a new policy. The Act should require that when a council chooses to deviate in some way from a standing policy, it must establish publicly, and to all affected parties, its specific reasons for doing so. The procedures to be followed in such a case should be established by the Minister through regulations.

*As an illustration we note that the inclusion of specific public works in an official plan serves in effect to impose a council's will on its successors. At the very least it seriously restrains future councils from reordering the municipality's spending priorities except through a very cumbersome process of amendment, appeal, etc. As a consequence, municipal capital works programs are routinely left out of official plans.

Review of plans

6.36 Municipalities do not generally monitor their planning performance. They do not as a rule check on whether their assumptions were really valid; whether their predictions turned out to be correct; whether their proposed actions were carried out as intended; whether the established objectives had been reached; and what the consequences were of the actions taken.

6.37 The Act today requires planning boards to review their plans "from time to time", but imposes no such requirement on municipal councils. Most plans of recent years specify that they will be reviewed in some stated time period, usually five years. This does not necessarily take place. And in any event, few official plans receive final approval in much less than five years from the time work on them began. A meaningful five-year review means that a municipality should have a new or revised plan in place, ready for adoption, just about the time the original plan is receiving provincial approval.

6.38 Regardless of what most plans stipulate, a serious review is usually undertaken only when a significant shift in public opinion has been expressed in the municipal elections; when the plan's obsolescence is so manifestly apparent that it becomes more and more difficult to operate on a day-to-day basis; or, occasionally, when the Province becomes impatient and steps forcefully in.

6.39 If planning is to be conducted in a responsible manner, monitoring and review are essential. We do not see this as something to be done once in a while, and we do not think it should be an isolated procedure to be conducted every five years, at best. Review is an integral part of the planning process and it should not be separated out for occasional attention, when things are slow. We propose that there should be a mandatory and continuing review of municipal plans.

6.40 The Act should require that municipalities that have plans or planning statements should establish periodically whether:

- The proposals and policies have been carried out.
- The assumptions proceeded upon are still valid.
- The objectives are still appropriate in the light of current circumstances, or in the light of better information concerning the original assumptions.
- The actions taken have been mutually consistent.
- The results have been as intended, or if there have been unintended consequences.
- The procedures have been working satisfactorily, particularly with respect to public involvement and the handling of grievances.

6.41 Organized formal review of plans which depends on comprehensive statistical information obviously cannot be carried out very frequently. But the kind of review that we think is necessary is not simply to up-date existing information; it is primarily to establish what the municipality has been doing and what the results have been. In principle, this kind of checking should be going on continuously. In practice, we suggest that it should take place at least once in the lifetime of every municipal council.

6.42 This need not be an onerous requirement. The work involved in periodic planning review will obviously be different for a large metropolitan community than a small town, but the nature of the review should be the same. It is essentially a report on what is going on, and should be required both of municipalities with comprehensive plans and of municipalities which simply have planning statements on their zoning or subdivision policies. We propose that the Act be amended to require that municipalities with formal plans or planning statements prepare and publish a plan review report at least once in the lifetime of each municipal council.

7 planning areas; joint planning; county planning

7.1 As the Act now stands, a municipality that wants to prepare a plan must be designated as a "planning area" by the Minister. It has been the general practice to withhold this designation from municipalities that are considered to lack the necessary resources for planning, or that cover geographic areas considered too small or otherwise inappropriate for planning purposes. Municipalities that have not been designated as planning areas can adopt zoning by-laws and process subdivision plans, but they cannot adopt official plans or engage in other planning activities that depend on having an approved official plan (including among other things, development review under Section 35a, park conveyance under Section 35b, redevelopment planning, or land separation consents administered by a committee of adjustment.)

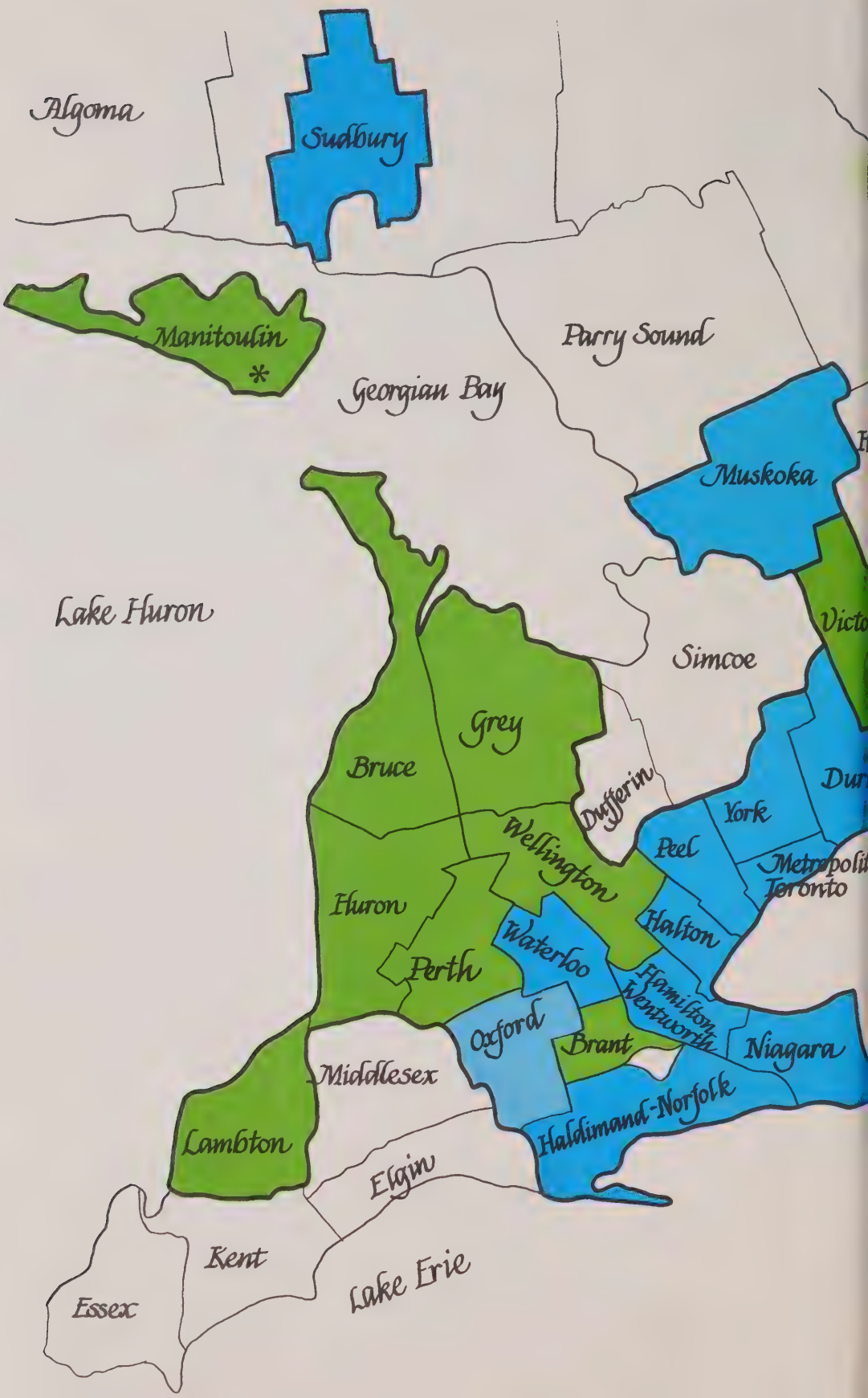
Joint planning

7.2 The prevailing provincial policy has been to establish planning areas that are considered to present viable or complete planning units. The objective has been to create large planning units and to promote joint planning programs for municipalities considered to have common planning concerns. A large number of joint planning areas have been created, covering two or more separate municipalities or parts of municipalities. One of the municipalities in a joint planning area is identified as the "designated" municipality for the joint area and the others are identified as "subsidiary" planning areas. In the case of joint planning areas comprising a city or town and one or more neighbouring townships or villages, the city or town is usually the designated municipality, but this is not always the case.

7.3 Planning in the regions and counties is formally, under the Act, joint planning. Planning arrangements in the 12 existing regional municipalities and one restructured county are discussed in Chapter 8. Of the 26 other counties in southern Ontario, thirteen are engaged in some form of county planning.* However, not all of the local municipalities within county planning areas are necessarily planning areas themselves; the current practice is to designate as subsidiary planning areas only those local municipalities that request the authority to prepare their own plans. The county planning areas also do not include any cities or separated towns that may be located within their geographic boundaries, though a number of such cities and towns have been combined with their neighbouring municipalities into separate joint planning areas of their own.

7.4 The joint planning system has operated with varying results. Joint planning has been relatively effective in some places, but is not considered to have been particularly successful in a large number of cases. Many of the joint

*The 26 upper-tier municipalities that are engaged in county or regional planning are shown on the following map.


Algoma
Sudbury
Manitoulin
*
Georgian Bay
Parry Sound
Muskoka
Lake Huron
Simcoe
Grey
Bruce
Dufferin
York
Peel
Wellington
Halton
Huron
Perth
Waterloo
Hamilton
Wentworth
Oxford
Brant
Niagara
Middlesex
Haldimand-Norfolk
Lambton
Elgin
Kent
Lake Erie
Essex

COUNTY AND REGIONAL PLANNING STRUCTURE

Regional municipality

Restructured county

County scale planning

* No planning staff

as of January 1st 1977

areas are inactive, and a number of the existing joint official plans are little more than mechanical compilations of the individual local plans. Apart from the county planning areas, few of the joint planning areas have the benefit of full-time professional staff available to them, though the use of consultants is a common practice. We have been advised that perhaps a third to a half of the 75 existing joint planning areas in southern Ontario are either totally inactive or operating poorly.

7.5 A basic problem in the system is the tenuous link between the joint planning boards and the municipal councils. The joint boards are not responsible to the individual councils (except, in a formal sense, to the council of the designated municipality) and often operate in a relative vacuum. In many instances they do not get the opportunity to offer their views on substantive planning questions; when they do, they may find their views disregarded by local councils which feel little identification with the joint board.

7.6 There are other structural problems. Provincial insistence on confining municipal planning to "suitable" planning areas often inhibits planning in small communities. Individual municipalities that want to exercise certain planning responsibilities are frequently kept from doing so by the Province's view that they are too small or otherwise ill-equipped for this purpose, and provincial insistence that they should be allowed to engage in planning only by becoming part of a joint planning operation. Councils that feel they have been forced into joint planning frequently fail to cooperate — by not adopting the joint plan, by retaining their obsolete plan, or simply by refusing to participate on an ongoing basis. Considerable confusion exists because of the practice of sometimes including only a part of a municipality in the joint area, or by placing different parts of a municipality in different joint areas, or even, sometimes, by including a municipality as part of two or more overlapping joint planning areas.

7.7 There is no doubt that joint planning works well in some places, and that the system has contributed to the establishment of municipal planning in many parts of the Province. But despite the benefits it may still provide in some places, we believe that the system of joint planning is essentially obsolete. We think that the system of inducing, forcing or otherwise cajoling municipalities into cooperative planning efforts is no longer appropriate. We find it paradoxical that while the joint planning system has not, in most cases, produced effective area-wide plans, it has in many instances served to inhibit rather than promote effective local planning.

Planning areas

7.8 We also believe that the statutory recognition of the defined planning area as the planning unit is no longer appropriate. It seems to us to have been a product of an era in which the planning board was seen as the effective creator of municipal plans and operator of the municipal planning system. This does not correspond to our basic premise that the authority for municipal planning should rest with the municipal council, which is the body that has the authority to implement plans. The notion of defined planning areas was also the product of a belief that planning responsibilities should be confined to

municipalities considered capable of exercising them. This does not correspond to our fundamental premise that any municipality that wishes to engage in planning and exercise planning controls should be allowed to do so.

7.9 We propose therefore that the Act be changed so as to eliminate the defined planning area as the unit for municipal planning. We also propose that the planning powers that are now available only to the councils of municipalities located in defined planning areas be assigned to all municipal councils.

Intermunicipal coordination

7.10 Eliminating joint planning areas as the vehicle for cooperative planning among municipalities will not eliminate the need for such planning. There is no doubt that in many places and for many kinds of problems there should be some way to coordinate the planning activities of separate municipalities. We have reached two conclusions in this regard. First, that cooperation at the local level can be successful only if it is carried out on a voluntary basis. Our second conclusion is that for dealing with broad area-wide planning, maximum use should be made of the governmental structure that is already available for this purpose, the existing county governments. Our proposals follow from these conclusions.

7.11 Our first proposal is that the Act should allow the establishment of voluntary joint planning committees, consisting of representatives of the municipal councils involved. These committees would not have any power to exercise planning controls, which would remain the responsibility of the individual councils. The function of the joint planning committee could vary, depending on local circumstances. In some cases the committee might find it desirable to prepare an area-wide plan to provide a framework for the individual local plans. In other cases the committee might choose simply to review on an ongoing basis planning problems of an intermunicipal or area-wide nature. In either case, the committees would submit their findings and recommendations to the councils involved for such action as the councils choose to take. The two essential points are that joint planning would be carried out, not by provincial fiat, but only when a genuine need was perceived by the individual councils; and second, that the joint planning committees would not have any statutory planning responsibilities.

7.12 Our other proposals derive from the belief that where the municipalities or the Province determine there is a need for intermunicipal planning on a formal basis, at least in southern Ontario, the existing county governments should be used for this purpose.* We have noted that of the 39 upper-tier governments in southern Ontario, one-third are already formally operating area-wide planning machinery (the 13 regions and restructured counties), and another third are engaged in some form of county planning. Furthermore, six of the remaining 13 counties are currently considering proposals to establish county planning. It is clear therefore, that governmental ma-

*The particular municipal planning problems in northern Ontario are discussed in Chapter 16.

chinery for intermunicipal planning of some kind is already available in a great part of the Province, and, presumably, in most of the places where the possible need for intermunicipal planning has been perceived.

County planning

7.13 We have three proposals with respect to county planning. The first is that the joint planning designation for county planning be abandoned, to coincide with our general proposal concerning joint planning, and that county councils be given direct responsibility for such county planning activities as they decide to undertake. This will bring county planning in line with regional planning, where the planning powers are being exercised directly by the regional councils. Under this proposal, county councils will have the power to adopt county plans or planning policy statements, and to exercise subdivision and consent approval authority.

7.14 Our second proposal is that the present power of counties to exercise zoning powers to a depth of 150 feet on each side of a county road be deleted from *The Public Transportation and Highway Improvement Act*. This derives from our conclusion that upper-tier municipalities should not exercise zoning powers, which is discussed in detail in Chapter 8.*

7.15 Our final proposal for county planning concerns the approval of subdivision plans and consents. We have already proposed, in Chapter 5, that county councils be authorized to determine in which of their constituent municipalities consent approval will be a local responsibility and in which a county responsibility. We also proposed that the county council have the authority to vary its land division committee decisions, on the basis of a formal county consent policy. We believe that this principle of county planning authority should apply to subdivision plan approvals as well. County councils that wish to exercise subdivision powers should be permitted to do so, on the basis of a formally adopted subdivision policy statement. Such county councils should also be authorized to determine in which constituent municipalities subdivision plan approval power will be exercised locally, and in which by the county council. We are making similar proposals with respect to the regional councils, in Chapter 8. The proposal is based on the premise that it is more suitable for the county council to sort out the respective interests of the county and the local municipalities in subdivision plan approval, than for the Province to make this determination.

Cities and separated towns

7.16 Whatever the extent of planning responsibility taken on by a county, this will not of itself ensure planning coordination between the county and any cities and separated towns that may be located within its geographic boundaries. We have already stated our conclusion that provincially-mandated joint planning is not a suitable arrangement. The question of the separated municipalities is indigenous in the structure of local government in the Province and is beyond this Committee's terms of reference. We have concluded that the

*As discussed in Chapter 8, however, we are not proposing that zoning authority be withdrawn from Oxford County and those regional municipalities that already have such authority under their own Act.

coordination of planning between the counties and the separated towns and cities must in the end be the Province's own responsibility. It can encourage and facilitate the establishment of joint planning committees, as described earlier, and it can also exercise coordination directly in its review of specific municipal planning decisions. This seems to us to be the practical limit to which provincial intervention should go in dealing with the planning relationships between counties and the cities and separated towns within their geographic limits.

Inter-regional coordination

7.17 In addition to intermunicipal coordination at the local level, there is a particular need for coordination at the broad inter-regional scale. There are substantial policy questions concerning, for example, housing, transportation, agricultural land, environmental resource management which require attention at an inter-regional level. The question of inter-regional coordination is now probably most pressing in the greater Toronto-Hamilton area, but may be an emerging need in other broad regions of the Province as well.

7.18 Inter-regional questions are now dealt with to some extent through the Province's "COLUC" plan (Central Ontario Lakeshore Urban Complex) and by two standing bodies in the Toronto area, the Toronto-Centred Coordinating Committee and the Toronto Area Transit Operating Authority. The status of the COLUC plan as an instrument of government policy is uncertain, and we do not think in any case that such a planning document can provide a suitable vehicle for dealing with broad inter-regional questions on a continuing or day-to-day basis. The two standing bodies are too limited in their organizational structure and substantive scope for this purpose.

7.19 Formal inter-regional planning machinery should be established, at least in the greater Toronto-Hamilton area and perhaps in other areas as well. We think the appropriate way to do this is to create permanent standing committees on inter-regional planning. These should be committees on which the regional councils concerned are directly represented, with provision for local municipal participation in particular matters, and with participation from the relevant provincial ministries. The responsibility of these committees would be to examine long-term area-wide policy questions and day-to-day matters concerning land use decisions and the coordination of facilities and services. What is required is that they be permanent standing committees; that they involve formal council representation; and that they be responsible for reporting to the councils on both day-to-day and long-term matters. We do not see these committees as being heavily staffed operations, and assume that some form of seconded staff services would be suitable for the purpose.

7.20 Our proposal is that the legislation be amended to provide for the creation of standing inter-regional planning committees. The precise way to organize these committees and how they should operate will require study by the provincial government and the regional councils concerned, and we recommend that this study be undertaken.

Improvements 7.21 If designated planning areas and joint planning areas are retained in the legislation, the present arrangements should be substantially improved. To begin with, the proposed principles and recommendations concerning municipal planning generally should be made applicable to joint planning areas. Any municipality that wants to engage in planning should be designated as a planning area on request, without having to participate in a joint planning area. Membership in joint planning areas should be entirely voluntary. Joint planning areas should include the whole of each participating municipality, with no municipality being part of more than one joint planning area. Overlapping planning areas that now exist should either be restructured on the new basis or eliminated. Councils should be allowed to establish joint planning committees, consisting of council representatives, in place of joint planning boards if they wish. Members of joint planning boards should be appointed by their respective councils, rather than by the council of the designated municipality, as the Act now provides.

7.22 Finally, the status of the designated and the subsidiary municipalities should be clarified. The present arrangement by which the joint official plan can be adopted by either the designated municipality or by one of the subsidiary municipalities should be changed. Each council should be empowered to adopt that portion of the joint plan which applies to its territory, and the designated municipality should be empowered in addition to adopt any policies or provisions that are of an area-wide character, extending beyond individual municipal boundaries. This should require, however, a recommendation by a 2/3 majority of the municipal councils constituting the joint planning area, say, or by councils representing 2/3 of the total population of the area.

8 two-tier planning: regional municipalities and restructured counties

8.1 The organization of planning responsibilities follows a common pattern in most of the restructured upper-tier municipalities, but there are important variations.* All of the upper-tier councils have the general planning powers that are available to municipalities under Part I of the Act (dealing mainly with official plans and redevelopment plans). Zoning, subdivision or consent powers are assigned to a few of the upper-tier councils through their individual Acts, and the Minister has also delegated to a number of other regional councils the authority to approve subdivision plans. In our consideration of possible changes in the two-tier planning system we are dealing mainly with the more common two-tier pattern in which statutory planning authority is exercised at both the upper and lower municipal levels, rather than those particular upper-tier situations which provide a form of unitary planning (Sudbury, Durham, Haldimand-Norfolk and Oxford County).

8.2 In all cases but Metropolitan Toronto the regional Acts require the adoption of a regional plan by a stipulated date. The Acts also provide that existing local plans are to be brought into conformity with the approved regional plan. This arrangement evidently assumes that when the provincial government has reviewed the regional plan, has secured the modifications it considers desirable and has approved the plan, the plan will incorporate provisions reflecting the relevant provincial interests. The region will then be responsible for ensuring that provincial interests are observed through the administration of the regional plan. It is expected that as a general rule the Province will then have to concern itself only with changes to the regional plan rather than with local planning actions. Presumably, if the government finds that a particular region is not adequately protecting provincial interests, the Minister will recall the approval authority from that region and resume his own direct supervision of local planning activities in that area.

8.3 This way of delegating planning authority to the regions departs in important respects from our general philosophy concerning municipal planning. It contemplates that the Province will assign to another level of government the basic responsibility for securing provincial interests in the operation of local planning. Moreover, rather than providing local municipalities with autono-

*This chapter deals with the thirteen restructured upper-tier municipalities that have now been established. They are variously termed in their legislation "metropolitan municipality" (Metropolitan Toronto), "district municipality" (Muskoka), "regional municipality" (Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Niagara, Ottawa-Carleton, Peel, Sudbury, Waterloo, York), and "restructured county" (Oxford). The different arrangements concerning upper and lower-tier planning in these thirteen municipalities are outlined in Appendix C. For convenience, we are using the terms "region" and "regional planning" in this chapter for all of the restructured upper-tier arrangements.

mous powers to make their own definitive planning decisions, this arrangement assumes these decisions will continue to be subject to approval by another level of government. We think it is necessary to examine two questions: first, whether it is realistic for the Province to depend on the regions and counties to secure the provincial planning interests; and second whether, so that the regions can achieve their own planning interests, it is necessary to circumscribe local planning autonomy inside the regions to a greater extent than we propose for local municipalities generally in the Province.

8.4 If our basic premise concerning local planning autonomy is not accepted, the question of local planning autonomy within the regions is academic. If our approach is sound, however, serious questions are raised concerning the present two-tier planning arrangements. These questions relate to the following: 1) The provincial role in two-tier planning. 2) The scope of regional planning. 3) The form and method of regional intervention in local planning. 4) The organization of two-tier planning. There is also the central question of the ability of regional municipalities to achieve their fundamental planning interests. We deal with each of these questions in turn.

Provincial role

8.5 The Province's basic concern is to ensure that its interests are adequately observed in the conduct of municipal planning, both within and outside the regions. We do not think it is feasible for all relevant provincial interests to be properly identified and satisfied in the course of preparing and adopting the regional plans. The provincial interests, as we have already stated, are diverse in nature and mixed in origin; they can arise from separate provincial policies that may conflict in important respects, and can also emerge in the day-to-day operation of provincial programs, or in provincial reactions to specific local initiatives. There is no reasonable way for a region to be certain, at any given time, that it knows what all the relevant provincial interests actually are. It is also not realistic to expect the regional councils, even when they have identified these interests, to always interpret and enforce the identified provincial interests in ways that are guaranteed to be satisfactory to the Province.

8.6 We have concluded that, even if plan approval authority is delegated to the regions, it will still be necessary for the Province to review local planning actions in order to determine whether specific provincial interests are affected. The Province will also have to retain the right to veto local actions, either directly, bypassing the region, or by recalling the regional approval power in specific cases where the region may have failed to deal with an unsatisfactory local action. Whatever method is used, we do not believe that provincial approval of regional plans will of necessity secure the provincial interests. Even if there is to be regional approval of local planning actions, we do not think the Province should delegate to the regional councils the responsibility to veto on behalf of the provincial interest. We suggest, therefore, that whatever degree of planning authority is ultimately assigned to the regions, the Province will have to continue to review local planning decisions, within the regions as well as outside them, and will have to retain the authority to veto local actions that conflict with stated provincial interests.

8.7 Two other aspects of provincial involvement in two-tier planning should be noted. First, regardless of the degree of authority assigned to the regions, the Province should ultimately be responsible for resolving local-regional disputes. Similarly, while conflicts between local municipalities may in many instances be resolved at the regional level without provincial intervention, the ultimate responsibility for resolving all intermunicipal conflicts must rest with the Province.

8.8 Second, in addition to being able to veto undesirable regional planning policies or actions, the Province has to be able to secure the inclusion in a regional plan of specific provincial projects or policies that may have been omitted from the plan, or that arise after the plan has been completed. (An example might be the omission of the North Pickering community from the proposed Durham regional plan.) At present, specific provincial interests are incorporated in a municipal plan by Ministerial modification of the plan. In a system where the Minister no longer approves plans, another mechanism is needed. As outlined in Chapter 4, we propose that the Minister should be able to request a regional council to incorporate a specific provincial policy in the regional plan; if the council does not agree, the matter should be heard by the Ontario Municipal Board, whose recommendations should be submitted to the Cabinet for a decision.*

Scope of regional planning

8.9 Apart from having the upper-tier municipality carry out all planning activities on behalf of local municipalities (as is now the case in Oxford County), there are basically three possible levels of regional involvement in local planning. At one end, the region would undertake total supervision and approval of local planning actions; at the other end, it would confine itself to the planning aspects of the various functional responsibilities (roads, services, etc.) which have been assigned to it by statute. Neither of these alternatives seems appropriate. The maximum end of the range would give the regions a level of authority over local decisions which we think goes well beyond legitimate area-wide needs and concerns. Conversely, restricting the region to a minimum level of involvement would impair its ability to deal with many area-wide interests which are not specifically defined as statutory functional responsibilities. We believe the proper level of regional involvement in local planning rests between these two extremes; the appropriate level of regional concern is to ensure that local planning actions are consistent with *defined* regional interests.

8.10 The present scope of regional planning is not clear. The regional Acts provide the same vague definition of a regional plan as is provided in *The Planning Act* for all official plans. ** In practice, the determination of a region's actual planning interest is effectively established through the process of securing an

*This is part of a broader set of proposals concerning the Ontario Municipal Board which are described in Chapter 10.

**"a program and policy . . . designed to secure the health, safety, convenience or welfare of the inhabitants of the area."

approved regional plan. This is the way in which variations in the scope of planning from region to region are finally established, beyond the differences provided for in each regional Act. The ultimate settling of a given regional plan will serve to define what that regional government's substantive planning interest actually is.

8.11 We have received submissions that it is not good enough to determine the scope of regional planning this way, and we are inclined to agree. Just as there should be a defined basis for provincial intervention in local planning, there should also be a defined basis for regional intervention in local planning, so as to set appropriate limits to that intervention. The basis for regional planning, and for regional intervention in local planning, should be defined in the legislation.

8.12 The appropriate way to determine the scope of regional planning is to relate it to the basic rationale for regional government. It is, we assume, to further the interests of the residents of the area as a whole, and particularly those interests which transcend local municipal boundaries within the area. In a planning sense, these interests primarily concern the region's economic and natural resource base. From these fundamental concerns derive the regional interests in the provision and distribution of employment and housing, the conservation and management of the region's agricultural and mineral resources, and the protection and management of the region's natural environment.

8.13 Regional governments also have an undisguised interest in carrying out their statutory functions. A region's planning interest must therefore be directly related to its responsibility for planning and operating the works, facilities and services for which it has direct statutory authority.

8.14 Our stated premise (in Chapter 2) is that municipal planning should be concerned mainly with the community's physical development, and that its primary purpose should be to establish and carry out policies and programs for the rational management of the community's physical development. This applies to the regional as well as the local level. The two kinds of regional planning concerns we have identified — area-wide planning interests and the planning of the region's statutory functions — are ultimately reflected, we believe, in a basic concern with the regional development pattern and development structure. We see this as the central focus of regional planning.

8.15 We have reached four main conclusions regarding the scope of regional planning. First, the scope of a regional municipality's planning interests should be defined in *The Planning Act*, so as to establish a clear basis for its direct planning activities and its interventions in local planning. The Act should specifically acknowledge regional and upper-tier planning, rather than being silent on the subject and dealing with upper-tier planning as simply a variant of municipal planning to which the general provisions apply.

8.16 Our second conclusion is that *The Planning Act* should define the basic regional planning interest as being the region's development pattern and structure. But it should establish that the regional planning concern with

the development pattern or structure arises from the council's basic responsibility for the regional economy and natural resource base, and from its statutory responsibilities. Thus, as an example, a regional council's concern with some specific aspect of the development pattern should be expected to arise from its specific interest in housing or employment distribution say, or regional services or transportation, rather than the reverse.

8.17 From this, it is clear that such questions as the size and shape of the future urban area, the rate of its growth, or the intensity of its development are a legitimate regional planning interest. (These are, for example, among the issues in the Ottawa-Carleton plan which were referred to the Ontario Municipal Board at the City of Ottawa's request.) We are satisfied that regional governments are suitably concerned with these matters, but not as abstractions. They are proper regional government interests only as they demonstrably arise from the region's concern with specific area-wide interests, such as for example the region's employment base or its housing stock.

8.18 Our third main conclusion is that there should be a distinction between what *The Planning Act* provides concerning the general scope of regional planning, to be applied to all upper-tier municipalities, and what is provided for in the individual regional government Acts. Regional municipalities should be able to pursue specific planning concerns or take on specific planning responsibilities that represent their own particular application of the overall concern with the regional development pattern — historic buildings say, or any other particular municipal planning responsibility. Individual regional Acts should be amended to allow this. It is in the process of securing such amendments that we would expect the respective interests of the regional and local governments in that particular matter to be sorted out.

8.19 Our final conclusion is that if the Act is to specify the scope of regional planning, it should also establish what is beyond the scope of a regional council's planning authority. We believe the following are not properly matters of regional concern:

- Whether the local municipality is engaging in "good planning" *per se.* As we have suggested earlier in connection with the Province's interest, this should be a matter of local norms, to be settled locally, with the regional concern restricted to true area-wide interests. We note later, however, some important areas of regional concern with local development standards.
- The suitability of local planning procedures. We feel it is the Province's responsibility to establish the basic requirements for the municipal planning process, and that these requirements should not be subject to regional variation. This question is discussed in detail in Chapter 9.
- The resolution of grievances of persons affected by local planning decisions. This too is a basic provincial responsibility which should not, in our opinion, be delegated to any other level of government.
- The resolution of disputes *between* local municipalities, which is also a provincial responsibility, arising from the Province's basic responsibility for local government. It should not be delegated to the regional munici-

palities or the counties, though the Province would not likely be called on to resolve an intermunicipal dispute unless the matter was not settled successfully at the regional level.

Regional intervention in local planning

8.20 The appropriate basis for regional intervention in local planning is to ensure that local planning actions are consistent with the defined regional interests. There are, in essence, three possible ways for a region to do this: 1) To *approve* all local planning actions. 2) To *veto* local planning actions that conflict with regional interests. 3) To *object* to such actions, with the Province resolving the matter.

8.21 It is now the Province's intention that after a regional plan receives provincial approval, the regional council will be made responsible for approving local plans and other planning decisions (as is already the case for subdivisions in several regions). We think this will be inappropriate, for two basic reasons.

8.22 First, we think it is wrong for one branch of municipal government to exercise direct supervisory control over another branch. The constitutional relationship between the Province and the municipalities at least supports the notion of provincial approval of municipal actions (though not necessarily its advisability), but this relationship does not exist between the regions and the local municipalities. Except for limited functional purposes (traffic control, for example), the regional municipalities do not as a rule approve day-to-day local government activities. We think it distorts the operating relationships in what are essentially federated governments to single out a local municipality's planning activities for regional approval. This is underlined by the fact, which we discuss below, that to achieve a regional council's planning objectives can require local municipalities to undertake positive actions which would not fall within the scope of regional approval in any case.

8.23 In addition to not being desirable, we do not think it is advisable for the regions to have to approve all local planning actions. The act of approval seems to us to be an excessive procedure. To approval a local government action the region must be certain, at least from a legal standpoint, that every aspect of the action is "correct". Not only must it be certain that regional interests are adequately protected, it must also in effect endorse the local action. We see no need for regional endorsation of those local actions which do not affect regional interests. We also think it is wrong that the regional council and its officials should be required, expected or allowed to pay attention to local matters not of regional concern. As with the present system of provincial approval, we believe that a system of regional approval will inevitably emphasize the approval process itself, and that it can ultimately become a matter of process for the sake of process. Regional approval might possibly be more efficient than provincial approval, in that the action would be closer to home, but this has yet to be demonstrated, and is likely at most to be a difference of degree only.

8.24 The second possible regional action would be to veto those local actions which conflict with stated regional interests. This also seems to us an inappropriate role for the region. To "veto" suggests that the body doing the vetoing occupies a superior position to the body whose actions are being vetoed. We do not think it is appropriate for the region to actually control local planning actions, and when regional and local interests conflict we believe the ultimate decision should be made by the Province. If our view is correct, there is no real basis for a decisive regional veto power. What the region should be able to do is to inhibit local municipalities from taking actions that are inconsistent with regional interests, leaving it to the Province to resolve the conflict, i.e., to make the actual decision as to which interest will prevail.

8.25 Assuming a region has been unable to negotiate the resolution of a particular planning conflict with a local municipality, the most appropriate way to proceed is to give the regional council the right to object, in a formal, authoritative manner, to local actions which violate direct regional interests. The Act should give the regions specific authority to lodge formal objections to proposed local planning actions.

8.26 The onus for objecting to a local planning action should be placed on the regional council. The Act should provide that any local planning action (which is not otherwise appealed) will take effect unless it is formally objected to by the regional council or vetoed by the Province within a stipulated time period. In the case of the Province, the veto would be decisive. In the regional case, regional objection would not be decisive; it would simply serve to trigger provincial resolution of a matter where informal negotiation has been unsuccessful. The Minister should be required to establish, through regulations, the appropriate period of time for lodging a regional objection to a local planning action. We think a period of thirty days for lodging a notice of regional objection and sixty days for a provincial veto action would be reasonable, but the specific time periods should be established by the Minister after review of the matter.

8.27 We have noted that the Province must of necessity be able to react to municipal planning proposals on a day-to-day basis as well as on the basis of predetermined policies. This should not be the case for regional councils. A regional objection to a local planning decision should have to be based on an established formal planning policy. As with all municipal planning actions, the adoption of regional planning policies should be subject to the process requirements described in Chapter 9: public notice, council hearing for receipt of public views and objections, and provision for appeal of grievances. If a council decides to change an existing planning policy in order to accommodate a particular local proposal, adoption of the revised policy should undergo the same process requirements as the original planning policy. But lodging a regional objection on the basis of a standing council policy would be an application of that policy, and should not in itself require public notice and hearing.

8.28 Provision should be made for two special situations. One is when an adopted regional policy has not yet been dealt with decisively by the Province (i.e., the period for a possible provincial veto has not yet expired). In such a case

the region should be able to lodge its objection to a local proposal as though the regional policy were actually in effect. If the regional policy were subsequently vetoed by the Province, this would clarify the status of the local proposal as well.

8.29 The second situation would arise if a local proposal is made while a particular planning policy is being prepared by the regional staff or is under consideration by the regional council. The Act should provide that the regional council may not object to a local planning proposal unless the regional policy had been adopted prior to the expiry of the period for lodging a regional objection. This is necessary so that local municipalities are not confronted with the possibility of regions being able to formulate and reformulate new policies simply as a basis for objecting to specific local proposals.

Legal conformity

8.30 The regional Acts now require that when the regional official plan has been approved, all local plans must be brought into conformity with it. Our stated concern with the application of "legal conformity" to municipal plans in general applies also to the regional plans. This is that the provision for legal conformity inevitably turns planning documents into legal instruments. Plans may be limited, on legal advice, to those matters for which conformity can be determined by the application of criteria incorporated in the policies themselves. Matters for which it may not be possible to determine the subsequent conformity of specific regional or local actions can thus be kept out of regional plans. A consequence is that some legitimate regional planning policies may not as a matter of course be included in the regional plan. We think that regional governments operating under the conformity provision are likely to be weakened rather than strengthened in their planning effectiveness. Their ability to pursue legitimate planning objectives can be seriously constrained by the "legal conformity" requirement.

8.31 Our basic proposal, described in Chapter 6, is that all municipalities be required to have regard for their adopted planning policies in any planning decisions they make. We are satisfied that it would serve the necessary regional planning purposes to require that local municipalities also have regard for the relevant regional planning policies. The Act should require that local councils, regional councils and other municipal bodies, including school boards and land division committees, be required to have regard for formally adopted regional plans and planning policies. We believe that substituting a "have regard" requirement for the present "legal conformity" requirement should serve to extend the effective operating range and substantive scope of regional planning.

Allocation of regional and local authority

8.32 The present variations from region to region in the allocation of planning authority between the regional and local governments reflect to an extent local opinion when the particular regional municipalities were established. There is nothing intrinsically wrong with allowing for variations in regional planning structure through the individual Acts, and this should continue to be the practice. *The Planning Act* itself should establish the common scope of regional planning responsibility and the general authority for regional

intervention in local planning actions to secure regional interests. Individual variations in the allocation of planning authority should continue to take place through the individual Acts.

8.33 Apart from the general authority that should be provided for regional councils to object to local planning decisions, it is necessary to examine specifically the allocation of authority for subdivision and consent approval, zoning and development standards. These are dealt with in turn here.

Subdivision and consent approval

8.34 As we have noted, the power to approve subdivision plans now rests with the regional council in some cases, and it is the Ministry's intention to delegate this power to all upper-tier councils that request it. The pattern for granting consents is also not uniform; it is distributed in different ways among the regional and county land division committees and local committees of adjustment (as described in Appendix C). The question is whether there should be uniform arrangements for exercising subdivision and consent approval, or whether the disposition of the approval authority should in each case be a matter for the regional council to decide.

8.35 To begin with, since subdivision plans and consents are both ways of subdividing land, everything else being equal the responsibility should be exercised by the same level of government in each case. The important principle is that both subdivision plans and consents be dealt with on the basis of the same planning policy concerning the subdivision of land, whatever the level of government involved. It follows therefore that whether it is the regional or local municipality that is approving subdivision plans, the same municipality should be approving consents (and vice versa).

8.36 We have already noted that there is a difference between urban and rural consents, which we think is applicable to urban and rural subdivision plans as well. Our basic premise is that rural land development is primarily a matter of area-wide concern for which the regional or county council should be responsible, while the details of how urban land is subdivided are a matter primarily of local concern. In the two-tier municipalities, the question to be decided is which geographic areas are to be considered rural in character and hence of area-wide concern, and which are urban and thus primarily of local concern. We think this question can be settled most effectively at the regional council level, where all of the interests involved, regional and local, are represented.

8.37 We see no overriding provincial interest in determining whether subdivision and consent approvals should rest with the regional or local level. Our proposal is that in two-tier municipalities the authority to approve subdivision plans and grant consents be assigned in the first instance to the regional council. The regional council should be allowed to reassign the approval authority to such local councils as it determines, if allowed to do so by amendment of its own Act. Any local council to which subdivision or consent authority has been assigned should be able to request the regional council to reassume this authority, if both councils find this appropriate. Where

the consent authority is already vested with a local committee of adjustment, as is now the case in some regions, this should continue to apply unless that particular regional Act is amended to permit assignment of this power to the regional land division committee.

8.38 The distinction between our proposals for two-tier municipalities and for other municipalities should be noted. The general proposal is that subdivision approval authority be assigned to all municipalities except where the Minister concludes this is not advisable from a provincial standpoint. Since both the regional and local councils cannot both exercise this authority in the same geographic area, the subdivision approval power should in two-tier situations be assigned in the first instance to the regional councils, which should then make the determination as to which local council, if any, should exercise this authority.

8.39 We proposed earlier that consent granting authority should derive from the municipal council rather than the appointed land division committee or committee of adjustment. This principal should apply in the regional municipalities as well. The committees should be required to have regard for the consent policy established by the relevant council, and the council concerned should be able to vary a committee decision within a period of thirty days, subject to normal appeal procedures. The council concerned, regional or local, should also have the authority to dissolve the particular committee if it chooses, and to assume the power to grant consents directly, as we have proposed for municipalities generally.

Zoning and development review

8.40 The major area of concern in zoning, which is determining the details of land use on the ground, should by definition be a matter primarily of local interest. We see no sound reason to assign zoning responsibility to the regional or county council.* The regional interest in local zoning should be established in the region's planning policies, and the regional council should be able to object to local zoning proposals that conflict with the adopted regional policy.

8.41 Following from this principle, we have concluded that it is not appropriate to continue the present regional zoning authority for a depth of 150 feet on each side of a regional road. The basic regional interest should be its statutory responsibility for operating the road, and the region should be concerned with the character or intensity of roadside development only as it affects the operation of the road. This can be regulated by more direct means, including access control, the imposition of road dedication or road widening requirements in processing development applications, or simply through objection to specific local zoning proposals. It is not appropriate for two levels of government to exercise zoning authority over the same pro-

*The provision for upper-tier zoning authority in Oxford County and Sudbury and Haldimand-Norfolk regions is an exception to this general principle.

perty, and we think the local zoning interest should have priority. We propose that the authority now given to regional councils to zone property along regional roads be deleted from the present regional Acts.

8.42 Development review under Section 35a of the Act is concerned with the details of development, and should also be seen as a matter primarily for local determination. We do not accept submissions made to us that regional councils should have the power to engage in development review under Section 35a. The regional interests with respect to development review applications can be secured the same way as for zoning proposals, as we now discuss.

8.43 While regional councils should not have direct zoning or development review powers, they should be able to secure their specific development requirements (land dedication, service easements, financial imposts, etc.) in the course of processing development proposals. These requirements are now secured either by direct imposition (on regionally-approved subdivisions), or through the local municipality on other subdivisions and on zoning and development review applications. The regions' ability to impose development requirements should be formalized by allowing them to be a direct party to all forms of development agreement, rather than just subdivision agreements as is now the case. The Act should also provide that the responsibility for taking the lead role in negotiating and executing a development agreement should rest with the council that has the responsibility for approving the particular proposal (subdivision plan, consent, zoning by-law, or development review application).

Regional development standards

8.44 We turn finally to the question of regional development standards. We propose in Chapter 14 that the Province restrict the ability of municipalities to engage in exclusionary zoning practices, and that it ensure that local development standards are not used to inhibit the provision of affordable housing. We also note that the determination of appropriate maximum development standards should be related to the characteristics of individual housing market areas. We are therefore proposing in Chapter 14 that the provincial authority for determining suitable area-wide development standards, including zoning specifications, be assigned to those regional councils that wish to accept this responsibility. It would not be appropriate for the regional council to reassign this authority to local councils, as there is no sound public policy basis, other than local desires, for local variations in what are essentially single housing market areas. Where the Minister assigns the authority to set maximum development and zoning standards to a regional council, he should retain the right to veto any particular standards that he considers excessive, and he should have the right to recall the authority from a particular regional council where he finds this necessary. This matter is discussed in more detail in Chapter 14.

Viability and credibility of regional planning

8.45 It has been submitted to us that any substantial alteration of the present arrangements for two-tier planning may seriously damage the credibility of regional planning in the Province. It has also been asserted that the provisions for regional planning lie at the heart of the regional government system, and that damage to the planning operation could seriously under-

mine the viability of regional government where it has been established. These are important issues requiring serious consideration. There has been a substantial investment of intellectual, political and financial capital in the regional government system, both provincially and locally. The regional system plays a central role in the structure of municipal government and municipal life in many parts of the Province. Changes that affect this system should not be made lightly, without due regard for their implications.

8.46 The central question is whether the particular circumstances of regional government warrant any significant departure from our position concerning local planning autonomy. Of concern here is our proposal that the regional councils determine for themselves whether subdivision and consent approval will be handled at the regional or local level; the proposal that regional councils be confined to objecting to local planning decisions that impair regional interests, rather than approving all local planning decisions; and our proposal that local plans be required to have regard for regional plans and policies, rather than being brought into legal conformity with such plans. A final question is whether it should be mandatory for regional councils to adopt regional plans.

8.47 What is at stake essentially is the kind of authority held by the region. We are told that if the regional council is not statutorily constrained, it will effectively dissipate its planning authority. Thus it is argued that if regional councils are allowed to assign their authority for subdivision approval to local councils, an inevitable process of "backscratching" will make it certain that the authority is in fact passed down. That if regional councils are only allowed to object to local proposals, the same process will make it certain that few local proposals are objected to. That, in sum, the regional authority will inevitably be watered down.

8.48 The question of backscratching is probably intrinsic in the structure of the regional councils, most of which are composed of persons elected primarily to represent local interests and who assume their regional role indirectly. Even regional councillors elected directly are likely to have strong local loyalties. The structure of regional government is beyond the scope of this Committee's attention. But the backscratching question should be acknowledged. The process of mutual accommodation or bargaining for votes frequently reflects a genuine community of interest between the parties involved. It may also, on occasion, represent arbitrary trade-offs between unrelated interests. The former may be considered acceptable or even desirable, and the latter "undesirable", but they are each a characteristic of the behaviour of elected councils, and particularly of councils of federated municipalities. It is beyond our mandate to try to devise a system which prohibits, or even inhibits, the process of mutual accommodation which characterizes our present political system.

8.49 We also see no practical way to alter the present system to eliminate this process. We are certain that it does take place, will take place, and in any event can take place, regardless of whether regional councils are required to approve local actions or are only permitted to object to them, whether they

are allowed or forbidden to delegate their subdivision approval power. We do not think the planning system should be designed to inhibit the process of mutual political accommodation, and do not think it possible to do so in any case.

8.50 The issue, in the end, is whether regional councils should be trusted to carry out their planning responsibilities, without externally imposed constraints that would keep them from deciding for themselves the appropriate distribution of planning responsibility in their own area. We think it is wrong to devise a planning system that relies on external constraints to force elected municipal councillors to do their duty, and to prevent them from selling out the store, so to speak. Despite strong representations we have received from some regional officials on this score, we hope that regional governments are not so fragile as to require such artificial support. In any case, we do not think the planning system can be used effectively to overcome structural weaknesses in two-tier government.

8.51 We have been told that in some of the regions the present provision for regional approval of local plans works well. That, knowing their plans must be approved, local councils and officials respect the regional role and are consequently cooperative; that the approval requirement provides a base for negotiation, and thus facilitates the inclusion in local plans of regional objectives; and that an approval procedure reinforces the region's ability to secure modification of local plans more readily than would an objection procedure.

8.52 We do not know if these arguments apply generally to most of the regions, but they are important. The arguments do not, however, meet our two basic concerns: 1) That it is not appropriate for one branch of municipal government to have to approve the actions of another when this does not apply to a broad range of municipal policy activities but only to planning; and 2) That it is not appropriate for regions to have to approve local planning actions when this approval is not decisive, i.e. when the power of ultimate decision rests elsewhere. We do not think that the operational consequences of approval vs. objection in the regions are sufficiently different to warrant a substantial departure from our basic position favouring local planning autonomy.

8.53 It is also claimed that the status of regional planning will be seriously weakened if local plans are not required to "conform". But as we have noted, to require local plans to conform to regional plans presents the same problems of legal conformity that were identified earlier in connection with municipal plans generally. This is that a conformity provision can constrain the municipal ability to plan for a range of substantive objectives. We think it could be particularly inhibiting to require legal conformity to regional plans that are by their very nature breaking new ground and dealing with new issues (environmental management, for example). To require legal conformity means that the criteria for establishing conformity of subsequent actions must be precisely determined in advance. We see this as an undesirable and unnecessary restriction on municipal planning, and particularly on regional planning. We think it is wrong to require that regional planning documents be turned

into legal instruments. We are confident that it would be adequate for the purpose of implementing regional policies if local plans were required simply to have regard for regional policies.

8.54 Finally the question of mandatory regional plans. The argument here is that the regional governments were put into place, among other reasons, to make plans for their regions; to determine the development pattern of the region and to provide a base for planning area-wide facilities and services. It is argued that the regional municipalities cannot carry out their government responsibilities in an effective way without engaging in regional planning. And it is argued that it is a normal and universal expectation that the regional municipalities will plan, that they will produce a regional plan. These are serious arguments. They do not however explain why, if a regional government is expected to plan, it must therefore be forced to plan.

8.55 There is a further argument to be made, which is that in the regional areas there are two distinct kinds of municipal planning to be accommodated, for which the regional plan is a useful vehicle. It can provide a way of sorting out diverse regional and local interests, and can serve as a public record of where these interests stand at any given point in time. Again, this supports the utility of having a regional plan, but not its necessity.

8.56 The fact is that the existing regional municipalities are required by their Acts to prepare regional plans. They are all doing so, and several of these plans have already been completed or are nearing completion. The statutory provisions for regional plans have presumably been accepted by the community, the machinery is operating, and there is little to be gained by altering these arrangements, and perhaps something to be lost. We do not propose that there be any alteration to the present requirements for preparing regional plans in the already-established regional municipalities.

8.57 We still do not think though that it should be mandatory for any municipality to have to prepare a plan. It is our fundamental position that what is required is, not that municipal planning be mandatory, but that no municipal planning decisions be allowed except as they are based on formally adopted planning policies. We are not persuaded that this should be less applicable to upper-tier municipalities than to municipalities generally.

8.58 Apart from the thirteen existing upper-tier municipalities already required to prepare plans, we see no need to make the preparation of regional or county plans mandatory. We think it would be particularly unfortunate to require that any future restructured county or any county which decides to engage in county planning be required to do so only on the basis of a county plan. We therefore do not recommend that the Act be amended to require that counties or other upper-tier municipalities be required to prepare and adopt a county or regional plan.

8.59 Even where regional plans are mandatory, the regions can be seriously constrained in achieving those policies or programs which require local municipalities to undertake positive actions. For example, regional policies dealing with housing distribution may require changes to local zoning by-laws. Zoning changes may also be needed for specific regional facilities, such as sewage and water plants, police stations, etc. In such cases, the regions should be able to request that the local by-laws be amended. Regions should also have the power to request the inclusion in local plans and planning statements of specific provisions of regional interest. In the event of local refusal, there should be provincial resolution of the conflict, with a hearing by the Ontario Municipal Board and a decision by the Minister. As with all other local-regional disputes, it seems to us that only the Province should make the final decision.

8.60 This kind of conflict resolution cannot apply though to regional programs which require local financial expenditures. To carry out some aspects of a regional housing policy, for example, could require the provision of local services or facilities that are solely a matter for local decision (assuming regional and Municipal Board approval of any capital borrowing which may be necessary). There is no ready answer to this kind of problem. There is no doubt that the implementation of many regional planning policies will depend on regional-local cooperation, which is beyond the scope of planning legislation. We see no ready way of using *The Planning Act*, or the planning provisions of the regional Acts, to solve what are essentially structural problems of two-tier government.

9 public involvement in municipal planning: planning process requirements

9.1 The committee has encountered a greater difference of opinion on the question of public involvement in municipal planning than on almost any other planning issue. Views ranged from claims that planning decisions are being made primarily in closed quarters with little opportunity for the expression of public views, to the belief that there is now excessive public participation in the planning process, which causes delays and contributes significantly to the high cost of housing. There are also a number of intermediate positions. In general, there is widespread dissatisfaction with the process and almost universal belief that it should be improved, but no agreement on how this improvement should take place.

9.2 There are two broad issues in connection with public involvement. The first is the general availability of opportunities for residents of a locality to participate effectively in the preparation of municipal plans and the making of planning decisions. The second major issue is that of public rights — the ability of persons whose interests may be affected by planning decisions to present their views and have their rights protected. These are related but separate issues, and should be dealt with separately.

Public involvement in planning

9.3 Concerning the opportunities for public involvement generally, the Act requires that planning boards "hold public meetings and publish information for the purpose of obtaining the participation and cooperation of the inhabitants of the planning area in determining the solution of problems or matters affecting the development of the planning area". Under this formal umbrella, municipal planning boards (and councils where there are no boards) publish and circulate information on plans and planning proposals, hold public meetings and hearings and receive comments from interested parties. The Act does not specify how the process is to be carried out, but it is the Ministry's general practice that proposed official plans and plan amendments must be accompanied by written material describing the public participation process which was undertaken.

9.4 Almost all municipalities involved in planning engage in public participation at least to some degree, but the practices vary widely.* In some places, there is an organized effort to secure constructive public involvement in all of the important elements of the process — the definition of planning problems, the establishment of community goals, the formulation of general planning policies, and the consideration of detailed planning proposals. In other places, public participation is much narrower, amounting largely to a solicitation of

*John Bousfield Associates, *Citizen Participation in the Preparation of Municipal Plans* Background Paper 4 (Planning Act Review Committee, 1977).

reactions to specific proposals. Many different methods are used — various ways of publishing and circulating information, formal and informal public meetings, open houses and community workshops, the use of community task forces, working committees and neighbourhood advisory committees, etc. The results of the process also vary; in some communities the views of organized public groups are given almost decisive weight, while in many other areas public views appear to have only token status.

9.5 A number of points were raised in the submissions made to us. One widely held view is that the present provisions in *The Planning Act* for public involvement are too loose, and that the wide variations in practice are inappropriate. We have been urged to recommend that specific requirements concerning the form, nature and content of public participation and specific procedures and methods to be used should be spelled out in the Act or in regulations. We have concluded that this is neither advisable nor practical. There is too much variation both in general community circumstances and in particular planning situations to recommend uniform practices. What might be suitable for a given community at a particular time, on a particular kind of matter, may not be appropriate for that community in other circumstances, or for other communities in similar circumstances. It should be a provincial concern that the residents of a municipality have adequate information about the council's planning activities and the right to make their views known, but the way in which this is done should be a matter for local determination. We have proposed earlier that municipalities should be required to establish the procedure that will be used to secure an adequate level of public involvement in formulating municipal plans and planning statements. This should give the residents of the municipality and the Province the opportunity to determine whether there are suitable arrangements for public consultation.

9.6 A second important view presented to us is that the public should be involved only at the stage of formulating objectives and policies, and not during the approval of subdivisions or other planning proposals which are simply detailed applications of these general policies. We are also unable to accept this proposition. As matters stand, particularly in newly developing areas, the persons likely to be affected by specific planning proposals may not be the same as the persons who were involved in the consideration of the original planning policies. We believe it would be unfair for new arrivals to be deprived of the right to express their views on matters of direct importance to them. Moreover, it is often difficult to appreciate the likely effect of a given planning policy until the detailed proposals have been formulated.

9.7 It is the application of general planning policies on the ground, in the form of specific subdivision plans say, which will give many people a real sense of how they may be affected by the policy. It would not be proper to circumscribe their rights to express their views at this stage. We appreciate that extensive public involvement in the consideration of subdivisions that are in accord with approved municipal plans can undermine the certainty which plans should provide, and can prolong the subdivision approval process. However, we think the answer to delay in the subdivision process is to set realistic time limits for consideration of subdivision plans, and to provide a suitable appeal mechanism for affected parties, not to circumscribe their right to be heard.

9.8 Another submission made to us is that municipalities should be required to demonstrate that there has been "effective public input" in the process of adopting plans or planning proposals. We do not see how the effectiveness of the public contribution can be established, other than perhaps by a description of the process itself, which is now the practice anyway. It would be wrong to require that councils give weight to all the views presented to them by the public, or, as is now sometimes the case, to give particular weight to the views of organized groups participating in the planning process. We feel there should be requirements concerning the process that councils engage in, but no specific requirements concerning the way in which they respond to the public's views.

9.9 Our position concerning the proper requirements for the municipal planning process derives from the second main issue noted — the need to ensure that persons whose interests may be affected by planning decisions have an adequate opportunity to present their views and have their rights protected. We are making a number of specific proposals in this regard.

Process requirements

9.10 The present legislative and Municipal Board requirements are very mixed and are confusing or unsatisfactory to many people. In essence, there are relatively precise requirements concerning the circulation to nearby residents of zoning by-laws and minor zoning adjustments, general requirements concerning consents and official plans, and no formal requirements concerning public circulation of subdivision plans. Objections from persons who are aware of specific proposals are heard by committees of adjustment and land division committees in the case of consents and variances, and usually, but not always, by planning boards in the case of official plans or zoning by-laws. Objections to all kinds of planning proposals may ultimately be heard by the Ontario Municipal Board. However, while the requirements for public consultation are far from uniform, most municipalites engaged in planning do in fact have organized procedures of one kind or another for circulating the details of plans and planning proposals to affected residents.

9.11 There may have been practical reasons for the differing public treatment of the various planning instruments, but we do not think that these variations are still appropriate. We have concluded that there is a basic right for persons affected by *any* planning proposal to be made aware of the proposal, to be able to express their views on the proposal, and, if they choose, to object to the proposal. We recommend therefore that the Act specify basic requirements for notification, hearing and objection, to be applied to *all* municipal planning actions — municipal plans and planning statements (or official plans if they are retained), zoning by-laws, subdivision plans, consent and variance applications, redevelopment and community improvement plans, etc.

9.12 The specific proposals for public involvement which we outline below are related to our other proposals concerning the role of the Ontario Municipal Board. Our proposal for structuring the municipal process relates specifically to our view that the Board's role should be limited generally to dealing with planning grievances, rather than to determining the merits of planning propo-

sals. The Board's role is discussed in detail in Chapter 10, but is noted here because it relates directly to our proposals concerning municipal planning process requirements.

9.13 We propose, first, that when considering planning proposals, municipal bodies (councils, committees of adjustment and land division committees) be required by the Act to circulate the details of these proposals to all persons who may be affected. The ministry should specify by regulation the exact procedures to be employed. As a general principle, there should be area-wide advertisement of planning proposals of general application, and direct notification of specific proposals to all persons (owners and tenants) within a specified distance of the site in question. There should also be mandatory posting of notices in public view on the property. The notices of planning proposals should be couched in "everyday" rather than (or as well as) "legal" language, and the way in which this is done should be laid down in regulations.*

9.14 Municipal councils should be required to hold a formal hearing prior to making any planning decision: enacting, amending or repealing a zoning by-law; approving or recommending approval of a subdivision plan; adopting or amending a municipal plan or planning statement (or official plan), or a redevelopment or improvement plan. The council should not have power to delegate the responsibility for holding the hearing to a planning board, but the Act should provide that the actual hearing could be held by a council committee, with the committee required to report the hearing results to the council prior to its making the decision.

9.15 Our proposals concerning the Ontario Municipal Board envisage that it will primarily examine the record of the council's action, rather than hearing the particular application as a fresh matter ("de novo"). It is therefore necessary that there be an accurate record of what took place at the council level. The Act should require the municipal clerk to prepare such a record, which should include the written reports and written submissions that were placed before the council, a list of the persons making oral and written statements to the council, and a summary of the submissions that were considered by the council prior to making its decision, including any oral statements made to the council by its officials.

9.16 To help ensure that the clerk's record presents an accurate summary, it should be advertised as being available for public examination. Persons who are not satisfied with the summary should be allowed to file an objection under oath, and these objections should be included in the final record. The

*For example, zoning notices should be required to provide a clear and complete explanation of the proposed by-law, including such matters as: the main provisions of the by-law and the standards to be used; a definition of the terms used; whether the by-law involves a change in use, density, height, etc.; and a brief description of the previous policy. The notice should also indicate the procedures for objecting to or appealing the by-law, and for obtaining more information concerning the by-law. The regulations should similarly prescribe the required content for notices concerning subdivision plans, official plans or municipal plans, and the other kinds of planning proposals.

Act should require that the record be submitted to the Ontario Municipal Board if there is an appeal from the council decision. Persons filing objections to the clerk's record, as well as the clerk, should be subject to cross-examination on their objection in the event of an appeal to the Board.

9.17 The kind of process we are proposing is based on the premise that the information on which the council bases its decision must be made generally available to interested or affected members of the public. It is necessary, therefore, that the written information presented to the council for its consideration, such as reports from municipal officials, be available for public inspection prior to the holding of the council hearing, so that interested parties may present their views on this material to the council. It is also desirable that council or committee meetings dealing with planning matters should ordinarily be held in public. However, since the general conduct of municipal council and committee meetings is beyond our terms of reference, we cannot recommend specifically that all council or committee meetings which deal with planning matters be held in public. We are recommending in Part III that all planning board meetings as such be public, and that private committee meetings to deal with planning matters (including committees of the planning board) be held only in accordance with rules of procedure approved by the municipal council.

9.18 The process requirements we have proposed for municipal councils should apply as well to committees of adjustment and land division committees. It is particularly urgent to clarify the procedures for circulation of consent applications. The Act now requires the committees to notify "such persons as the committee considers proper". The actual practices vary widely. For example, the Provincial Ombudsman has received complaints of committee decisions on consent applications being made without notifying even the immediate neighbours of the property concerned. We propose that the Act require the Minister to establish through regulations the procedures to be used by committees of adjustment and land division committees with respect to notice and the circulation of committee decisions, so that all potentially affected parties will have adequate opportunity to present their views and lodge objections.

Unincorporated associations

9.19 The rights of ratepayer groups or other informal resident groups to participate in the planning process and to lodge objections to planning proposals demand particular attention. As matters now stand, it is not required that such groups be notified of planning proposals or that they be allowed to participate in council or planning board hearings. Strictly speaking, because they are not legally recognized as persons, ratepayer groups are not generally entitled to standing before the Courts, although as a matter of practice the Ontario Municipal Board does afford standing to such groups. It is the general practice in most municipalities for such groups to be allowed to make representations to councils and planning boards, and as a matter of general though not universal practice, the Ontario Municipal Board will hear submissions from representatives of voluntary associations. We think the uncertainty of their status has probably had some inhibiting effect on the willingness of persons to participate actively in the planning process through their voluntary organizations.

9.20 We believe that the residents of a municipality should have the full right to participate in the planning process through ratepayer groups or other voluntary associations as well as on an individual basis, and we see this as part of the broader problem of establishing suitable procedures for the conduct of municipal planning. We have earlier recommended that the Minister establish rules respecting notice and the conduct of hearings. These should be framed in such a way that officers of unincorporated associations will receive notice of any proceedings in which the group is interested, and will have the right t participate in those proceedings as representatives of their group. The municipality should be able to determine for itself any specific requirements that should be applied with respect to identifying such groups (such as, for example, registration, listing of membership, etc.), and this should be provided for in the regulations.

9.21 The legislation should allow individuals representing voluntary associations the right to lodge objections or appeals on behalf of the members of that group. It has been suggested that representatives or members of ratepayer associations and similar groups should not be held liable for costs in the ever of an unsuccessful action, but we are not persuaded that the power of the Municipal Board or the Courts to award costs should be changed. The Board or the Courts should have discretion, however, to grant immunity from the liability for costs where they feel it is appropriate. At the same time, successful parties to whom the Board or the Courts might ultimately award costs could be severely disadvantaged if their opponents had received prior immunity from liability for those costs. It is necessary to ensure the rights of a parties to planning proceedings, both the residents who find they can participate most effectively through their own groups, and the successful parties to whom costs might ultimately be awarded. We think it is a provincial responsibility to ensure these rights, and we suggest that in cases where immunity fr liability to costs is granted at the initiation of the proceedings, any costs tha are subsequently awarded should be paid for by the Province from funds pr vided for this purpose.

10 the ontario municipal board

10.1 The Ontario Municipal Board today plays a pivotal role in the operation of municipal planning. Through its direct approval powers and its power to make decisions on matters appealed to it or referred to it by the Minister, the Board can approve, modify, or reject almost the entire range of planning decisions made by municipalities. It has become customary over the years for any planning issues that are at all contentious to end up before the Board. Except for non-contentious matters and those Board decisions that are ultimately appealed to the Cabinet, the Board has become, for all practical purposes, the final arbiter of municipal planning decisions in the Province.

10.2 The Board's role in municipal planning was reviewed by a Select Committee of the Legislature in 1972, and by the Ontario Economic Council in 1973. The Select Committee concluded that the Board should retain its role as an independent tribunal, and recommended a number of changes in its operation. The report to the Economic Council concluded that the responsibility for provincial decisions concerning municipal planning should rest exclusively with the Minister, and that the Board's function should be to hear appeals and make recommendations to the Minister.

10.3 We have examined the functions of the Ontario Municipal Board in the light of our general principles concerning the municipal planning system and the provincial role in that system. The relevant principles are:

- The provincial role should not be to approve all municipal planning actions, but to prevent those actions which impair provincial interests.
- The Province should assure the protection of the civil liberties of all persons affected by municipal planning decisions.
- Provincial policies affecting municipal planning should not be set by administrative agencies or officials, but should be established in an authoritative manner by the Legislature, the Cabinet, or the Minister.

10.4 Our main concerns about the Ontario Municipal Board derive from these principles. We think it is wrong that in approving municipal planning decisions the Board is frequently called on to substitute its own judgment for the judgment of elected municipal councils or the Minister. Moreover, where explicit provincial policies are lacking, the Board can be required to determine such policies, and is thus in some instances called on to make rather than simply apply provincial policy.

10.5 Our concerns with the role of the O.M.B. have been illuminated by a case currently before the Board, the Ottawa-Carleton regional plan. Because of requests from the City of Ottawa and other parties, the Minister was required

to refer to the Board almost the entire essence of the plan, including matters affecting the future physical form of the area, its rate of growth, the character and distribution of future housing, and much of the basic transportatio network. The provincial government's responsibility with respect to determining the future development pattern of this area has thus been passed on to the Board. By contrast, the Minister himself was able to settle the main principles and policies of the plans for Regional Waterloo and Regional Niagara, because of the fortuitous circumstance that he was not requested to refer these matters to the Board. Even acknowledging that the Board's decisions could ultimately be appealed to the Cabinet, we do not think that assigning decisions of this magnitude to an administrative tribunal meets the basic principle of political accountability which should be central to the municipal planning system.

10.6 We also note that it is legally possible for the Cabinet to give policy direction to the Board. However, ministerial directives have to our knowledge been issued on only a very few occasions, and then only as an ad hoc response to particular matters the Board was dealing with. Given the fact that provincial direction to the Board can as a practical matter take place only by way of direct intervention into specific Board hearings, we do not see the formulatic of systematic provincial policy directives for the Board as being a realistic prospect.

10.7 We have reached three main conclusions concerning the role of the Ontario Municipal Board. First, it should not have the responsibility of making final decisions on planning matters, but should instead conduct hearings and mak recommendations to the Minister for his decision, or in certain circumstance described below, to the municipality. Second, it should not have the respons bility of finally determining provincial policy or the planning merits of any matter; such responsibility should rest with the bodies elected for that purpose, i.e., the Minister and Cabinet, or the municipal council, as the case ma be. Third, the Board should have effective authority to review the way muni cipal planning decisions are made in order to ensure that the municipality's behaviour has been reasonable and fair. The Board should continue to play a major role in resolving grievances from municipal planning decisions.

10.8 Our specific recommendations fall into three categories. The first area is the role of the Board, if our basic proposals concerning the authority of municipalities to adopt their own municipal plans, zoning by-laws and subdivision plans are accepted. The second is the function of the Board if provincial approval of official plans, zoning by-laws and subdivision plans is retained. And the third deals with a number of changes concerning the Board's practices and procedures. Included in these recommendations are proposals concerning the lodging of frivolous or irresponsible objections and appeals t the Board.

O.M.B. as appellate body

10.9 Under the system we are proposing, municipalities should have the general power to make final decisions concerning municipal plans, zoning by-laws and subdivisions, subject to the Minister's veto of actions contrary to provincial interests. In this system, the Board should serve only as an appellate body. It should hear appeals from parties who object to a council's decision

or who object to a council's failure to reach a decision on an application. In either case, appeals should be restricted to two grounds:

- That the council's behaviour in reaching or failing to reach a decision was unreasonable or unfair.
- That in reaching or failing to reach a decision, the council acted on incorrect or inadequate information or advice.

10.10 Submissions have been made to us arguing that the responsibility for reviewing a council's behaviour should rest with the Courts rather than the Board. We proposed earlier that the Act specify the rules which must be followed in making municipal planning decisions (notice, hearing, reasons, etc.), and we are aware that if these rules are established in the Act, a decision of a council that violates the process requirements will be open to being quashed by the Courts. What is of concern here is the ability to lodge a grievance against what a person may consider unreasonable or unfair behaviour on the part of a council, as contrasted with patently improper behaviour. It should be possible, for example, to complain that members of a council had effectively committed themselves to a particular course of action prior to holding a hearing on a matter, and that as a result, the council did not fairly consider the information and submissions made to it at the subsequent hearing.

10.11 Extreme violations of the process requirements — e.g. arbitrary denial of the right to be heard — are clearly matters for a Court's determination. But for consideration of grievances against less extreme but still unfair or unreasonable council behaviour, the O.M.B. can provide a more accessible forum than the Courts, and the legislation should provide for this.

10.12 It has also been suggested to us that if the Board considers grievances based on the contention that a council acted on incorrect or inadequate information, this is tantamount to having the Board consider the actual merits of the decision (i.e. whether the council's decision was "correct"). We do not think this is the case. Our proposal is based on the premise in our earlier recommendations concerning municipal process, that the Board should have before it a full record of the information and advice the council had when it was making its decision. The Board's role should be to review the contention that this information or advice was incorrect or inadequate, and that as a result, the council did not have the opportunity of fully considering all aspects of the matter in reaching a decision. It should be open to an aggrieved party to demonstrate to the Board what correct and adequate information was extant and should have been considered by the council in making a decision that was in the public interest. The distinction between adequacy and inadequacy, between correctness and incorrectness, is a fine one, but it is crucial. If municipalities are to have autonomy in determining for themselves the merits of the planning matters they deal with, it is also necessary that affected parties have the right to assurance that the councils have dealt with the matter on the basis of correct and adequate information and advice.

10.13 If the Board is to serve as an appeal body from council decisions, we believe it should not be hearing matters on a *de novo* basis, as it does today. The Board is now required to consider the expediency of the proposals before it, and, for zoning by-laws, the merits of each objection. It must therefore hold a

hearing on the matter anew, in order to ascertain the merits. Very frequently, the information presented and the case made to the Board are substantially different from what had originally been considered by the council. Totally new experts may be introduced into the Board's hearing. The information they present and the arguments submitted to the Board may differ widely from what council had considered. The case presented is often a rationalization, after the event, of the decision that was reached by the municipality without the benefit of the expert advice offered to the Board. In these cases, it is not possible to establish what the council's decision would have been if it had been privy to the same advice and information as was made available to the Board. We believe the Board's proper role is not to make the decision it considers the council should have made, but rather to determine if the council had obtained correct or adequate information or advice in reaching its opinion. If the O.M.B. decides that the information before council was *not* correct or complete, it should remain the council's prerogative to reach an opinion on the basis of information that *is* correct and complete.

10.14 The disposal of an appeal to the Board will depend on the grounds of the appeal. If the Board finds that a council did not behave in an unfair or unreasonable way, the appeal should be dismissed. If the Board finds that the behaviour was unfair or unreasonable, it should report this to the Minister, with recommendations as to the action he should take. The Minister should be responsible for ensuring that grievances against unfair council behaviour are suitably dealt with. He should have the authority to confirm the council's decision, to veto it, or to alter it as he considers appropriate, having regard to the Board's findings and recommendations.

10.15 Where an appeal is lodged on the ground that a council acted on the basis of incorrect or inadequate information or advice, the Board's action could vary. The Board should be authorized to dismiss the appeal if it finds that the council proceeded on the basis of correct information, or if it finds that, while certain information before council was not correct or adequate, taken as a whole the information or advice utilized by council in reaching its decision supported the decision. If the Board concludes that the council should have had the benefit of different information or advice in order to reach a decision, the matter should be returned to the council for reconsideration of that information. If the council restricts its reconsideration of the matter to the specific information recommended by the Board, council should not be required to hold a new public hearing on the matter. But if in reconsidering the matter council chooses to receive significant new information or advice, a new public hearing should be mandatory.

10.16 The council to which a matter has been returned could also act in various ways. It could decide not to proceed with the matter; it could consider the information forwarded by the Board and reach a different decision; or it could consider this information and confirm its original decision. An aggrieved party should be able to lodge an appeal in any of these cases, but not on the ground of inadequate or incorrect information. Further appeal and hearing by the Board should be available only on the ground that council's behaviour, in its reconsideration of the matter, was unreasonable or unfair. In this event, the Board's new findings and recommendations would be made to the Minister, as described above.

10.17 We have been told that if the Board submits recommendations to the Minister or sends matters back to municipal councils for reconsideration, rather than making decisions itself, this will extend the time required to reach definitive decisions on municipal planning matters. We do not think that greater delay is likely to be the general case. It is true that for complex planning matters, the Board could be required to canvass virtually the same range of matters as it now does when examining the merits of the case. But the canvass should of necessity be shorter and less intensive, because the question the Board will resolve is whether the information council had was correct, not whether council's interpretation of the information was correct. The Board's examination should therefore be more restricted than is now the case. Our position is that if the Board determines that better information should have been available to the council, in the end it will be the council that makes the decision on the basis of this information and not the Board. This supports our fundamental premise that planning decisions should be made by elected persons directly accountable for these decisions: by the Minister at the provincial level, and by the municipal council at the local level.

O.M.B. role in present system

10.18 The above proposals concern the Ontario Municipal Board's role in a system in which municipalities exercise the final authority over their own municipal plans, zoning by-laws and subdivision plans. However, it is also necessary to consider the Board's role if the present system of provincial approval is retained.

Official plans and subdivisions

10.19 If he is requested to do so, the Minister is now required to refer to the Board an official plan or official plan amendment adopted by a council, unless he believes the request is frivolous, or is not made in good faith, or is made only for purposes of delay. If a council refuses to adopt a proposed official plan amendment within a 30-day period, the applicant can request the Minister to refer it to the Board, but unlike the case of official plan amendments adopted by a council, the Minister is not obliged to make the referral if he chooses not to do so. In either case, the Board is authorized to make a decision in the place of the Minister.

10.20 The provisions concerning the referral of subdivision plans are almost the same. If requested, the Minister must refer a draft subdivision plan to the Board unless he believes the request is frivolous, not in good faith, or only for purposes of delay. Final plans, however, cannot be referred to the Board. On an applicant's request, the Minister must also refer to the board any conditions which he has imposed or intends to impose. Draft subdivision plans being considered by regional councils to whom the approval power has been delegated must also be referred to the Board on request (again except for frivolous delay or bad faith requests). In addition, a council's decision on a draft plan may be appealed to the Board by the applicant or any other party that has requested it be notified of such a decision. Final approval of subdivision plans can be given only by the Minister or the delegated council.

10.21 As a rule, the Minister is not able to determine that a request to refer an official plan or a subdivision plan is unwarranted, mainly because there is no ready way for him to make such a judgment. As a result, almost all such

requests do in fact result in a Board hearing. It is not known if any appreciable number of such referrals are frivolous or otherwise disqualified, but we think it would be useful for a screening procedure to be established. We propose two improvements. First, any party making a request that a matter be referred to the Board should be required to submit the reasons for the request. Second, when he thinks it is appropriate, the Minister should be authorized to ask the Board to conduct a preliminary hearing and to submit its findings as to whether a given request is frivolous, not in good faith, or submitted for purposes of delay.

10.22 Even if official plans and ministerial approval of subdivision plans are retained, our view of the Board's role is substantially the same. The Board should be responsible for hearing grievances and making recommendations to the Minister, and the Minister should be responsible for making the decisions. We think that the underlying principle of political accountability is immutable and should be maintained. We are proposing therefore that if the present system of official plans and subdivision approval continues, the Act should be changed to provide that the Board is to make recommendations to the Minister, but is not authorized to make decisions for the Minister.

Zoning by-laws

10.23 The Select Committee found that most of the public concern with the Municipal Board's role in municipal planning related to its responsibility for approving zoning by-laws. This was confirmed in our meetings throughout the Province. The hearings on zoning by-laws are the Board activity that most directly touches the interests of the residents of the Province and that also has the most direct impact on the planning activities of municipal councils.

10.24 Perhaps the most contentious issue in this regard is the question of how to deal with frivolous or vexatious objections. There is great concern that objections to municipal zoning by-laws are used as a way of delaying their coming into force, or as a means of securing improper changes or other benefits. Objections are sometimes lodged as a matter of principle, almost as a reflex action, and sometimes from genuine misunderstanding of the provisions or implications of a by-law. It is not unusual for hearings to be set and elaborate or costly preparations to be made by municipalities or other parties, only to find that, at the appointed time, the objectors have not materialized, or that the objections are quickly withdrawn after an explanation of the matter. There is a strong conviction, which we share, that while it is essential to uphold the rights of aggrieved parties to object to municipal zoning by-laws, a means should be found to allow frivolous or trivial objections to be screened out.

10.25 As the Act now stands, when there is any objection to a municipal zoning by-law, the Board is required to hold a hearing unless it considers the objection "under all the circumstances" to be "insufficient" to require a hearing. As a practical course, the Board finds that it is almost always obliged to schedule a hearing when there has been any objection to a zoning by-law adopted by a municipal council.

10.26 We have received three suggestions in this connection. One is that persons wishing to object to zoning by-laws be required to post a bond guaranteeing

their appearance at the hearing; another is that the Board make greater use of preliminary hearings as a means of screening out frivolous objections; and a third is that for objections to be recognized as a basis for requiring a hearing, they must be accompanied by suitable reasons. We deal with these proposals in turn.

10.27 We think it is unacceptable to introduce any provision in the Act which would serve as a financial inhibition to persons who are aggrieved by a council's zoning decision and wish to object to it. We are therefore not able to recommend that objectors be required to post appearance bonds.

10.28 The Board on occasion tries to use preliminary hearings in order to assess the validity of objections, but has found that these hearings have to be so broad in scope as to amount virtually to a full hearing on the by-law. The Board now makes effective use of preliminary hearings as a means of sorting out the issues on particularly complicated matters, but it is doubtful that such hearings could be used as a general practice to screen out frivolous objections. We are unable to recommend a statutory provision that preliminary hearings be used for this purpose; whether a preliminary hearing is to be held should continue to be determined by the Board.

10.29 We think it would be appropriate to require that objectors to zoning by-laws furnish written reasons for their objections. It might also be useful to extend the Board's authority to award costs. Objectors could be notified when they submit their appeals that the filing of an objection is a commitment to appear at the Board hearing, and that they could be assessed costs by the Board for non-appearance. We think this could be effective in limiting trivial objections, but we are concerned that it might also inhibit the filing of valid objections. We propose, therefore, that the Act be changed to require that persons wishing to object to a municipal zoning by-law must file *written reasons* for their objection, and that the Board and the relevant ministries consider the desirability of allowing the Board to award costs against objectors for non-appearance at a hearing.

Decisional criteria

10.30 If the Board continues to be responsible for approving zoning by-laws, it would be desirable to establish by statute what the Board should consider in reaching its decisions. The Courts have established that in considering a zoning by-law the Board is to examine its expediency, but we do not think this directive adequately reflects the provincial interest in municipal zoning by-laws. Establishing statutory criteria would help to provide a consistent framework that would relate the Board's zoning decisions to the basic provincial interest in municipal zoning.

10.31 We propose that if the O.M.B. retains zoning approval, the Act be amended to stipulate that in dealing with zoning by-laws, the Board should consider the following questions:

- Is the by-law unreasonable in terms of the nature and weight of the public and private advantage it will yield, measured against the anticipated financial, social or environmental costs and the anticipated deprivation of property rights?

- Did the council have incomplete or incorrect information or advice in reaching its decision to adopt or not to adopt the by-law?
- Was the council's behaviour unreasonable or unfair?

10.32 Municipalities are concerned that even when there are no objections and a hearing is not required, zoning by-laws must still be forwarded to the Board for approval. The Act now provides that in a municipality with an official plan, a zoning by-law can come into effect without review by the Board if stipulated provisions concerning notice, to be set by regulations, have been followed. However, despite repeated requests from municipal councils and a recommendation from the Select Committee, the necessary regulations have never been established.

10.33 We agree that even in a system where the Ontario Municipal Board approves zoning by-laws, there is no need for the Board to review by-laws to which there are no objections. We have already recommended that the Minister establish regulations concerning the way in which municipalities are to give notice of zoning by-laws, and we also recommend that the Act be amended to allow zoning by-laws to come into effect automatically if there are no objections from either the provincial government or from any other parties.

Consents and minor zoning adjustments

10.34 We have recommended earlier that consent decisions should stand unless the municipal council chooses to alter the committee's decision within a 30-day period. This proposal is based on the premise that the authority for consents should rest with the council, which can delegate such decisions to land division committees and committees of adjustment. If this proposal is adopted, the Act should be changed so that the Board will continue to hold hearings on appeals from committee decisions, but will make recommendations to councils for their decision. If the council's decision is not in accord with the Board's recommendation, the Act should allow further appeal to the Minister without an additional Board hearing. Where a council has varied a committee decision, the Act should provide for the Board to hear an appeal and make recommendations to the Minister for his decision on the matter.

10.35 If the present authority of the committees to grant or refuse consents is retained without giving councils the power to vary the decisions, the Board should continue to hear and decide appeals, as the Act now provides. The present arrangements regarding minor zoning adjustments should also be retained. As we are not proposing any changes in the present authority of committees of adjustment to grant variances or other minor adjustments, the Board should continue to hear and decide appeals from the committees' decisions.

Other appeals

10.36 The Board is now authorized to hear and decide appeals from the Minister's decisions on consents and from the Minister's Section 32 zoning orders. We do not think it is appropriate for the Board to make decisions for the Minister. The Act should require the Board to hold hearings on these appeals and to submit its findings and recommendations to the Minister, who should be responsible for the final decision. Similarly, the Board should hold hear-

ings in cases of planning disputes between municipalities, and should make recommendations to the Minister for his decision.

10.37 Finally, if the Board retains authority over zoning by-laws, it should also continue to decide on appeals from the applicant on council actions concerning development review applications under Section 35a of the Act. But if zoning authority is transferred to the municipalities, the Board's role in dealing with development review appeals should be to present its findings and recommendations to the municipal council for a decision or to the Minister, depending on the grounds of the appeal (as in our proposal concerning zoning by-laws).

Frivolous appeals

10.38 The concern with frivolous or trivial objections to zoning by-laws, which was noted earlier, applies generally to all other Board hearings, including appeals on subdivision plans and consents and requests for referral of official plan amendments. The Act should require that all appeals to the Board as well as all requests to the Minister to refer matters to the Board should be accompanied by written reasons for the appeal or the request.

10.39 Concern has been expressed at the fact that the Board cannot defer its hearing on a matter for which other approvals may be required under other legislation, such as *The Environmental Protection Act* or *The Public Health Act*. We believe that in a case where multiple approvals are required, it is in the public interest that the Municipal Board's consideration of the zoning by-law be given last, after it has been determined that the necessary health or environmental approval will be given. We therefore propose that the Act be amended to permit the Ontario Municipal Board to defer a hearing on a zoning by-law application until all the other required certificates have been secured.

Record of Board hearings

10.40 Our recommendation that the Board's general role should be to conduct hearings and make recommendations to the approving authority (Minister or council) requires that there be an adequate record of what took place at the hearing (as well as the record of what took place at the council level). This is also important if the Board retains the power to make decisions. In this case, the Board's decision can be appealed to the Cabinet, and our proposals concerning such appeals (which are dealt with below) require that a record of the Board's proceedings be available to the Cabinet. A record is also necessary in the event that a Board decision is appealed to the Courts. We propose, therefore, that the Act require the Board to keep a verbatim record of its proceedings on any planning matter, with the cost to be borne by the Province. Transcripts of the record should be prepared at the request of any petitioner or appellant, also at the government's expense. To avoid wasteful or frivolous misuse, the Act should provide that the Cabinet, in the case of a petition, or the Courts in the case of an appeal, should have the power to award costs, including the cost of transcribing the record if the petition or appeal is deemed to be without merit.

Petitions to the Cabinet

10.41 Any party may now petition the Cabinet to review a decision by the Board. Petitions on planning matters have become an increasingly common practice. It is now the case that almost any matter of consequence will ultimately

find its way to the Cabinet (unless it is appealed to the Courts). There are no stipulations as to the kinds of matters the Cabinet can consider, nor the basis on which it is to consider such matters. The Cabinet is able to confirm or change the Board's decision, or to refer it back to the Board for a new hearing.

10.42 Concern has been expressed about the lack of a screening mechanism for Cabinet petitions and at the lack of specifications for the Cabinet review process. The Select Committee recommended that petitions be screened for their merit by a committee of Board members (other than those involved in the original decision), but we do not think this would be suitable. If the Board retains the power to make decisions on planning matters, affected parties should have an unrestricted right to have these decisions reviewed by the government.

10.43 There are two main areas of concern regarding petitions to the Cabinet: the procedures involved in an appeal to the Cabinet, and the basis on which the Cabinet may vary a decision by the Board. We propose that rules of procedure concerning petitions to the Cabinet be established by regulations. The regulations should specify among other matters, the channels through which petitions and opposing briefs are to be presented, and a specific time period in which petitions must be dealt with, failing which a petition will be deemed to have been granted. The Act should provide that the Cabinet be required, in announcing its decision on a petition, to state its reason for the decision. The Act should also allow the Cabinet to delegate to a committee or to a Minister the authority to consider and decide a petition.

10.44 There can be many factors at work in a Cabinet review of a Municipal Board decision, including the provincial policy implications of the matter, the merits of the matter (e.g. compassionate or hardship considerations), or the way in which the matter was handled. We believe that Cabinet review of the Municipal Board's planning decisions should take place within a consistent and reliable framework. We propose that the Act be changed to provide that the Cabinet should have explicit power to vary the decision of the Board if it has established one or more of the following:

- That the Board determined the matter on incorrect or incomplete evidence.
- That the Board disregarded evidence.
- That the Board incorrectly interpreted the relevant legislation.
- That the Board incorrectly identified or incorrectly elaborated a provincial policy.
- That the policy applied by the Board was inappropriate.
- That the conduct of the hearing was unsatisfactory.

10.45 It is of the utmost importance that the Board's planning decisions be subject to government review, but we do not think the process should be ad hoc. We believe that the adoption of these criteria will help to provide reliability, consistency and certainty to the process of Cabinet review.

Precedent and consistency

10.46 We have received submissions urging that the Board be required to follow precedent in its decisions. Concern has been expressed that on occasion, decisions on matters of a similar nature may differ substantially and that, as a result, applicants or appellants may be confronted with fortuitous, rather than predictable results. It has been suggested that *The Planning Act* or *The Ontario Municipal Board Act* should stipulate that the Board is to be bound by precedent in dealing with municipal planning matters.

10.47 The question of precedent is primarily a legal one. The Courts have established that under current legislation the Board is required to examine the expediency of the applications it deals with, and there has been a decision that in doing so, the Board may not fetter its discretion by treating itself as bound by its previous decisions. There is no doubt, however, that it is desirable for the Board to deal with applications in a consistent way. We do not think this should be a matter of legislative requirement, but of practice by the Board itself.

10.48 It is now the Board's practice to attempt to secure as much uniformity and consistency in its decisions as is compatible with its mandate to examine the issues it deals with on their merits. There is a Board committee which reviews the Board's decisions on a regular basis to determine if there are serious departures from earlier decisions. This committee also formulates Board policies with respect to the interpretation of statutes. It is clear that the Board does attempt to establish criteria that can be employed in a consistent way throughout the Province and with respect to particular kinds of applications. The Board's practices appear to be useful in promoting certainty and predictability of decision making. We believe that the Board makes reasonable efforts to ensure consistency in its decision, and we do not think that there should be any effort to enhance this by statutory means.

10.49 While we do not think the Board should be required to follow its own previous decisions, we think it is important for the Province to monitor the Board's decisions as to the appropriateness of their expression as applications of provincial policy. This sort of review may now take place informally, but we believe it should be systematic, comprehensive and public. If the Board is to serve as an effective means of carrying out provincial policy, the government and the Legislature should be kept aware of whether this is in fact taking place. We propose that the Act require the Housing Minister to submit an annual report to the Legislature concerning the Board's planning decisions and their relation to provincial policies. The Minister's report should also review the statutory criteria under which the Board operates, and whether they should be modified so as to improve the Board's effectiveness in carrying out provincial policies.

Decentralization of the Board

10.50 We have received proposals that the Ontario Municipal Board should be decentralized to a number of regional locations, on the ground that Board members who are residing permanently in different parts of the Province would have a greater familiarity with local conditions and circumstances, and could deal more effectively with the matters presented to them. It has also been argued that such decentralization would facilitate Board hearings and help speed up the process. Against this is an expressed concern that if the Board members were to be relocated on a permanent basis, they could become

subject to local or regional considerations which would affect the Board's ability to act on a consistent basis across the Province. Various suggestions have been made as to how the Board might be reorganized on a regional basis, but the general feeling expressed to us is that there should be Municipal Board offices in London, Ottawa, Sudbury, Thunder Bay and perhaps Kingston, as well as Toronto.

10.51 It is now the Board's general practice to conduct its hearings at the location of an application, and there is no evidence that this is not adequate insofar as the actual hearings are concerned. We give weight to the proposition that Province-wide consistency, as well as administrative efficiency, are facilitated by having the Board's members located in a central place where the criteria employed, the application of relevant statutes, and the introduction of new or changed provincial policies can be reviewed on an ongoing basis. There is no clear evidence that the quality or efficiency of the Board's decisions is impaired by the fact that it now operates out of a central office in Toronto. We are not able to recommend that this arrangement be changed.

10.52 It would be useful, however, if arrangements could be made to conduct preliminary hearings at locations outside Toronto. Such hearings can help to facilitate the disposition of various kinds of cases, and the ability of municipalities or appellants to take advantage of such hearings should not have to depend on their having legal representation in Toronto. While the question of the Board's efficiency and effectiveness is outside our terms of reference, we have concluded that the parties involved in or affected by municipal planning decisions could receive considerable benefit if the Board could arrange to hold preliminary hearings on a regular basis at various centres in the Province. This was also the Select Committee's conclusion. We recommend that this be given serious consideration by the Board and the relevant ministries.

10.53 It is also important that affected parties in locations outside Toronto have access to the material involved in individual Board cases, particularly the reports submitted to the Board by the Ministry of Housing or other ministries. We have been advised that since the Board's files are under constant change, it would be difficult to arrange to have them deposited in more than one location. However, copies of the Ministry of Housing's reports are now deposited with the clerk of the municipality concerned. This should be made the practice for the reports of other ministries as well, and the availability of these reports in municipal offices should be made a matter of public knowledge.

10.54 One particular administrative change which should be considered is for the Board to have an administrative office in northern Ontario. This could facilitate access to the Board from the relatively remote parts of the Province and could improve the Board's awareness of the administrative situation in the northern communities in which it holds hearings. We think this kind of limited administrative decentralization could be very useful, and should be given consideration by the Board and the ministries concerned.

11 development control

11.1 Zoning by-laws are commonly used for two different purposes: protection of the established character of existing communities, and the regulation of new development.* It is argued that using zoning for these different purposes creates difficulties. First, that zoning is not flexible enough to deal with individual properties and is thus too rigid for regulating new development. Also that zoning frequently misleads the public by providing a false sense of assurance as to the future use of the lands and the character of development in their communities.

11.2 Two principles are at work. One is the use of zoning to afford the municipality an adequate means of determining the kind of development that should take place. The other is to provide the residents of an area and the owners of individual properties with reasonable certainty as to the kind and intensity of development that will be permitted. These principles are compatible where the municipality is able to establish the future use and characteristics of land development in a conclusive way. They come into conflict, however, in situations where for one reason or another it is not possible for the municipal council to determine in advance precisely how the land in a particular location should be used. Where the use and characteristics of the area are known, conventional zoning by-laws provide the residents with reasonable stability, and give the individual property owner precise knowledge as to what can and cannot be done with his land. Where future uses cannot be precisely determined, no such certainty exists.

Development permit system

11.3 Earlier studies have proposed that in areas undergoing development or redevelopment (so-called "areas of change or future growth"), the present system of pre-zoning all of the land should be replaced by a system in which municipalities grant development permits on a site-by-site basis. (The addition of Section 35a to the Act, permitting development review of individual proposals, was a partial response to these recommendations.) It has also been suggested to us that the zoning system be replaced in its entirety by a universal development permit system similar to that used in Britain.

11.4 While a development permit system can provide flexibility, we see a number of important disadvantages. A development permit system is inherently discretionary; it contains a large potential for decision making outside the framework of established and properly adopted planning policies. There are considerable public costs from the exercise of discretionary control powers: an almost total lack of certainty and predictability; a potential for the mis-

*Zoning by-laws are referred to as "restricted area by-laws" in *The Planning Act*. We are recommending in Part III that the term be changed to "zoning by-laws".

use of municipal power in order to extract improper advantages from development proponents; and a much higher potential for arbitrary decision making on the part of municipal councils and their officials. We are convinced that these costs far outweigh the potential benefits of a development permit system.

11.5 There are deficiencies in the present zoning system — limitations on municipal ability to deal with detailed aspects of development that cannot be expressed in quantitative terms in advance, and the misleading impression of certainty and stability which present zoning practices often yield. To help overcome these deficiencies it is necessary to broaden the scope and effectiveness of development review and of interim development control. But we have concluded that it is not advisable to replace the present zoning system with a system of development permits, either universally or on a partial basis in areas undergoing new development or redevelopment.*

11.6 This conclusion derives from the basic premise that runs through many of our other findings — that the planning system should provide certainty and predictability to the public, and should give municipalities effective ways to meet their planning needs. Our conclusion is that in operational terms a development permit system is only marginally different from a system of pre-zoning plus development review, and that the lack of certainty and predictability inherent in a development permit system are serious disadvantages which outweigh the benefits of such a system. Our basic proposal is for improvements, particularly in the area of interim controls and development review, that will help to overcome the major problems in the system of development control through zoning.

11.7 The crux of the problem is the kind of control that should be available to municipalities in situations where it is not feasible to establish in advance exactly what should happen, either in an area generally or on given properties. This can be the case in three general kinds of situations: 1) Where changes in land use policy are contemplated; 2) Where rural land is being converted to urban use; and 3) On properties that are environmentally sensitive or have other unique locational features. In the first situation it is desirable that a council be able to exercise some kind of interim control over development. In the latter two situations, councils should be able to impose controls that have the effect of holding properties in their present use pending later decisions.

Interim and holding controls

11.8 Interim and holding controls are now achieved in various ways. These include: 1) Effectively freezing development through a holding zone or an agricultural designation and releasing the area for development when certain conditions have been met (e.g., installation of services); 2) Maintaining existing zoning

*We note however that a development permit system is now in force on Crown lands in northern Ontario. We are proposing, in Chapter 16, that development permits be used in designated settlement areas in the north as an interim measure during a transition to the use of conventional zoning by-laws.

which is obsolete and unrealistic in terms of likely development, thus necessitating rezoning property by property; and 3) Downzoning to grossly unrealistic specifications, again necessitating rezoning, either on an area-wide or site-by-site basis.

11.9 These techniques work well or poorly depending on individual circumstances. The use of holding zones is appropriate only if there are clear and realistic rules as to the circumstances in which the hold will be released. Maintaining obsolete zoning, or downzoning to grossly unrealistic levels can be seriously misleading in terms of public perceptions of the likely future; for example, the use of an agricultural designation for prospective urban lands is a practice that can be particularly misleading. As these various control devices operate at present, they have a potential for highly discretionary, ad hoc decision making which does not provide sufficient certainty for individual pro- property owners or the general public.

11.10 A particularly questionable practice is the way in which councils sometimes use statements of intent. A municipal council wanting to change its zoning policies in a given area can forestall the issuance of preemptive building permits simply by formally announcing its intention to rezone in a particular way. This statement can serve to effectively freeze development while the necessary studies and related steps in the rezoning process take place (notification to affected parties, receipt of objections, enactment of by-law, Municipal Board hearing, etc.) Apart from the availability of judicial processes there are no formal restrictions on this kind of freeze; it can be continued for considerable periods through failure to enact the rezoning by-law or other delaying tatics, and while the freeze is in force it can be lifted on individual properties at the council's discretion. Not infrequently, the interim control which is intended to set the stage for rezoning begins to approach an indefinite control. Such formally unrestricted use of the statement of intent procedure should not be allowed.

11.11 Despite their problems, interim and holding controls should be available to municipalities to use in appropriate situations. The practices should be systematized and made formal however. They should be carried out in a way that permits the municipality to make reasoned decisions, but that also provides the affected public (both property owners and nearby residents) with reasonable certainty as to the kind of development that may take place. We are proposing that municipal councils be given explicit authority to enact interim control by-laws and holding by-laws in specific circumstances and in a stipulated manner. The two proposed instruments are discussed in turn below.

Interim control by-laws

11.12 A municipal council should be able to control development on an interim basis when it decides to review or change the existing land use and development policies in a given area. The council may want to do so because it feels it was elected to institute a change in policy, or because it believes circumstances have changed since the zoning in effect was enacted. The contemplated change may involve a reduction in the permitted intensity of use (downzoning), as was the case in recent years in a number of Ontario com-

munities, including Hamilton, London, Ottawa and Toronto; it may also involve changes in use as well as density. Interim control is needed in these situations so that the municipality's future options are not preempted while the new policy is being established. While the process of determining the new policies is underway, a mechanism is required to forestall the kind of development that could take place under the existing zoning.

11.13 *The Planning Act* should allow the use of interim development control in a systematic and responsible manner that protects the rights of the affected parties. The Act should provide that councils may adopt a Resolution of Intent to enact an Interim Control By-law (thereby effectively freezing the permitted uses as of that date), and that they then be required to hold hearings within 30 days to determine whether the by-law will in fact be enacted. The resolution should set out the specific objectives for the control by-law and the planning program to be undertaken (work program, schedule, funding, etc.) in order to amend the original zoning by-law. The interim control by-law should specify the uses that will be permitted as a matter of right for the duration of the by-law, and the criteria that will be employed in dealing with applications for exemption or amendment to the by-law.

11.14 Interim control by-laws should be limited to a duration of one year. If a municipality that is in the process of working on the new zoning finds that extra time is needed to complete the program, the council should be allowed to enact a new by-law extending the period of interim control for a further maximum of one year. To prevent an unreasonable use of interim control by-laws and to provide a reasonable degree of stability, further use of an interim control by-law in a given geographic area should be prohibited for a three-year period following the expiry of the original control by-law or an extension by-law.

11.15 While in effect, an interim control by-law would suspend (rather than revoke) the provisions of the existing zoning. When the control by-law expires, the original zoning would be restored, unless amended by a new zoning by-law of indefinite duration. Specific provision should be made in the Act to protect any property rights which may have vested during the period of interim control through enactment of amendments to the interim control by-law.

11.16 We have earlier recommended that the provincial review of zoning by-laws be limited to a veto of policies that are contrary to stated provincial interests. This should apply as well to interim control by-laws or their extension. In the event that Ontario Municipal Board approval of municipal zoning by-laws continues to be required, there should be a similar requirement for Board approval of interim control by-laws and extensions.

Holding by-laws

11.17 We have noted two situations in which municipalities should be able to place land in a holding category. The first is where rural land is to be converted to urban use at some future time and it is not feasible to establish in advance the exact specifications for the future urban uses. Until urban services are available or the land is otherwise ready for development, the municipality must

have some means of allowing the continuing use of the land in a reasonable way, without precluding decisions that can best be made at a future date. A mechanism is also needed that will allow the municipality to establish, at an appropriate time, the conditions under which development will be permitted to take place.

11.18 The other situation requiring holding controls concerns specific locations for which it is not possible to establish in advance precise quantitative performance specifications. These typically would include environmentally sensitive areas in which it is necessary to determine the likely impact of a given development proposal before the precise zoning requirements can be established. Other kinds of unique geographic situations (locations with extraordinary design requirements, such as waterfront areas for example) may similarly not be amenable to the advance determination of quantitative specifications. In these situations, it is not feasible to establish quantitative restrictions capable of formulation in by-law language, until specific development proposals have been evaluated. All that can reasonably be done in advance is to set out qualitative principles and policies that will apply to the site, and the basis on which the impact of specific proposals will be determined. A municipal council should be able to place such properties in a holding category so that preemptive development is not allowed to take place without prior municipal review.

11.19 Municipalities should continue to have the right to enact holding by-laws in limited circumstances, but the legislation should establish the basis on which such by-laws may be enacted. The Act should limit this authority to the two particular situations noted: 1) Rural lands proposed for urban development on the provision of specified urban services; and 2) Properties where the impact of development cannot be established in advance and regulated by appropriate performance standards expressed in quantitative, rather than qualitative or judgemental language. The categories for which municipalities are authorized to enact holding by-laws, such as urbanizing land, environmentally sensitive land, locations with extraordinary design characteristics, should be specified in the Act. To enact a holding by-law a municipality should be required to adopt a planning statement setting forth the specific objectives to be achieved through this mechanism, and the basis for selecting the specific areas or properties to be covered.

11.20 Holding by-laws, like interim control by-laws, should specify the uses which are permitted by right during the period of the hold. Unlike interim by-laws, however, holding by-laws need not be limited to any specified time period. Each holding by-law should spell out the uses that will be permitted by means of site-specific amendments, and should specify the decisional criteria that will be employed by the council in considering applications for amendment. It is this lack of a requirement that criteria be established, or the use of inadequate criteria in many cases, which impairs the operation of many holding by-laws today. Clearly stated decisional criteria, spelled out in advance, will provide a responsible and reliable way for municipalities to transform their qualitative planning principles (concerning natural environment impact, for example) into measurable zoning specifications.

11.21 In addition to improving the operation of interim development control and holding by-laws, a number of other changes should be instituted to improve the municipal development control system. These concern the use of zoning agreements, temporary zoning, obsolete by-laws, zoning incentives, and development review under Section 35a of the Act. We deal with these matters in the sections which follow.

Zoning agreements

11.22 It is a common practice for municipal councils to require an applicant for rezoning to enter into an agreement as a condition of the council's adoption of the requested by-law. Zoning agreements are similar to other kinds of development agreements, such as subdivision agreements, and usually cover such matters as land conveyances to the municipality, financial imposts, building and site design requirements, or other conditions that the municipality normally imposes on new development. Despite the widespread practice, however, there may be some question as to the legal validity and enforcability of zoning agreements. We think any doubts of this sort should be removed by making explicit provision for zoning agreements in the Act. Like all other municipal planning actions, the practice of requiring zoning agreements should stem from the municipality's planning policies. We propose that the Act be amended to provide that municipal councils may require a zoning applicant to enter into an agreement with the municipality as a condition for adopting a zoning by-law, provided the municipality has adopted a formal planning policy statement setting out the objectives for requiring zoning agreements and the basis on which zoning agreements will be determined.

11.23 The Act should limit the matters that can validly be dealt with in a zoning agreement, so that the conditions imposed do not serve to avoid prohibitions on the exercise of the municipality's statutory powers. If for example the Act is amended to prohibit exclusionary zoning practices, as we propose elsewhere, municipalities should not be allowed to use conditions in zoning agreements to circumvent this prohibition. Municipalities should not be permitted to use zoning agreements in ways which extend their power of development review beyond what is permitted under Section 35a, or which extend their power to impose levies beyond what is permitted by the Act generally.

11.24 To be effective, zoning agreements must be enforceable. In addition to providing that they may be enforced against subsequent owners, the Act should authorize municipalities to require the posting of bonds or cash deposits to insure performance of stipulated requirements, such as, for example, the installation of services.

Temporary use zoning

11.25 In addition to interim control by-laws other kinds of temporary use zoning are also needed on occasion. Municipalities may now establish temporary zoning for parking purposes but for no other use. We see no reason why the power to zone on a temporary basis should be limited in this way, and propose extending this provision to cover all uses. Zoning for temporary uses should be based on policies contained in a formal planning policy statement, and should be limited to the objectives specified in such a statement. The Act should set a maximum duration of three years for a temporary by-law, but should allow it to be renewed for successive maximum 3-year periods until

the temporary zoning is replaced by permanent zoning. The temporary use by-law should specify the uses that will come automatically into force on its expiration. The Act should also provide that non-conforming use status cannot be secured as a result of uses established under the temporary by-law.

Obsolete by-laws

11.26 Our proposals concerning interim control should reduce municipal dependence on retaining obsolete by-laws as a way to control development on a site-by-site basis. We think that the retention of by-laws which are obviously out-of-date or irrelevant is wrong in principle and does much to discredit the operation of municipal planning and zoning. We have examined various ways of dealing with this problem and have concluded that it would be both desirable and practical to require that municipalities examine the basis and appropriateness of their by-laws at least once every five years. The Act should make periodic review mandatory, and should require the Minister to establish by regulations the criteria and procedures for carrying out the review. To reduce the need for provincial monitoring and to facilitate self-enforcement, the Act should also provide that any resident can seek a judicial order to compel a municipality to conduct the required review.

11.27 Our proposal would still allow a municipality to retain obsolete zoning if it chooses, but the process of systematic public review should significantly reduce the practice of using obsolete zoning as a means of controlling land use by site-specific amendments. The basic principle is that interim control should be carried out directly and not indirectly. Our proposal concerning obsolete by-laws is related to the proposal that more direct ways be provided to exercise such control through interim control by-laws.

Zoning incentives

11.28 While zoning is used mainly to set limits on what can be done on a property, it can also be used in a positive way to help municipalities achieve specific policy objectives. It is a relatively common practice, for example, to grant density bonuses in exchange for the provision of extra facilities or amenities in apartment projects, for specific design features, for the provision of public access to private open space, or for other features which a municipality considers desirable. Similarly, it has been proposed to use zoning so as to allow owners to transfer development rights between different sites in order to secure the retention of historic buildings. We think it is legitimate for a municipality to use its development control powers in ways which help it to further its housing or development policies, and feel that the use of incentive mechanisms such as bonus zoning and the transfer of development rights should be formally acknowledged in the Act.

Transfer of development rights

11.29 The transfer of development rights is a relatively untested practice, and the limits and conditions governing the use of this mechanism should be established in the legislation. We propose that the Act be amended to authorize the transfer of development rights between building sites in order to achieve any of the following objectives:

- Preservation of privately-owned open space free of buildings
- Retention and maintenance of historically or architecturally significant buildings

- Retention of axial views or other significant civic design features
- Promotion of equity between owners of large and small development sites in locations designated for mixed use development.

11.30 Municipalities should be authorized to allow the transfer of development rights between building sites on the basis of planning policy statements which establish the municipality's objectives and the basis on which density will be transferred. The policy should establish the maximum amount of density rights which may be transferred and the general locations within which transfers may take place. It should also establish the criteria to be used by the council for deciding whether to grant or refuse density transfer applications.

11.31 To carry out an actual development rights transfer between two sites, it is necessary to establish in the zoning by-law the maximum density to be allowed on both the recipient and donor sites. The Act should provide that the change of density on both sites may take place automatically without the necessity of further rezoning, when the owners of the donor and recipient sites enter into a transfer agreement. Notice of this agreement should be registered against the title of the donor site to alert subsequent purchasers of of the permitted reduction in density.

Bonus zoning

11.32 It is now relatively common to grant density bonuses in order to secure specific building design or site features. In some municipalities the practice is carried out within a rigorous framework, while in others it is more or less ad hoc. We think the use of density bonuses is appropriate, and that the scope of the practice may legitimately be broadened so as to encourage the provision of assisted housing, for example. As with all other regulatory actions, the granting of density bonuses should be conducted on the basis of explicit planning policies.

11.33 We propose that the Act be amended to authorize the use of bonus zoning, on the basis of formal planning statements that establish the specific objectives being sought through bonusing and the criteria to be employed in the award of bonuses. The statement should also establish the quantities of density rights to be allocated for bonusing purposes in specific situations and the locations or areas in which bonusing may take place. As with all other planning policies, the adoption of a density bonusing policy should be subject to the normal requirements of the planning process, including notification, hearing, receipt of objections, and appeal.

11.34 In situations which satisfy the qualifying criteria, the actual award of density bonuses should be automatic. On the assumption that the municipality's bonusing policy has gone through the normal process of public consultation and formal council adoption, the application of the policy should be seen as execution of the council policy, similar in nature to the granting of any permit which meets stipulated legal requirements. We propose therefore that individual rezoning of sites involving the award of density bonuses not be required. The Act should instead authorize municipalities to include in their

general zoning by-law a provision for the award of density bonuses, and should allow them to enter into agreements for this purpose prior to the issuance of the necessary building permits.

Development review

11.35 Many municipalities now require, as a condition for rezoning, the execution of a site plan agreement under which site plan approval is required before the building permit may be applied for. However development proposals that conform to the existing zoning and do not require site plan approval can generally proceed without site plan review. Under Section 35a, which was added to the Act in 1973, municipalities now have the power in certain circumstances to review site and building plans and impose conditions on development proposals not requiring rezoning or subdivision approval and thus not otherwise coming under planning scrutiny.

11.36 Development review and the imposition of conditions under a Section 35a zoning amendment can be exercised by any municipality which has an official plan and a by-law delineating the geographic areas covered and the matters subject to conditions or review. The official plan is not required to contain policies dealing with the principles or basis for exercising development review or, for that matter, with development review in any fashion. The Act lists the specific matters that can be dealt with in Section 35a by-laws, and in practice many of the development review by-laws adopted to date simply recite the matters as listed in the Act: parking, circulation and access; road widenings and service easements; site grading, landscaping and flood-lighting; snow removal and waste storage; site layout and external building design. Municipalities may require that the facilities listed be maintained by the property owner at his own expense, to the municipality's satisfaction. Building height and density are specifically excluded from Section 35a review, and municipalities are not authorized to review building plans for small-scale residential development (buildings containing less than 25 dwelling units).

11.37 We have received many submissions concerning Section 35a and the development review process. On the one hand it is stated that Section 35a is too narrow in scope. The submissions are that municipalities should be allowed to deal with building height and density on a site-by-site basis, even though these are already covered by the municipality's zoning restrictions; that the specific matters reviewed are too limited in coverage; and that the design of small-scale residential developments should also be subject to municipal approval. On the other hand, it is argued that municipalities exercise development review on a completely discretionary basis without reference to any pre-established standards or criteria. This leads to arbitrary decision making, inequitable treatment of individual applicants, and what has been described to us by both land owners and municipal officials as polite blackmail. There is also concern that the development review process creates prolonged delays, and that in many cases it is a very costly, cumbersome operation.

11.38 Whether municipalities feel they can afford the costs of engaging in development review is for their own decision. If a municipality has identified certain benefits which will accrue from development review, it should be able to determine, to its own satisfaction, whether it wants to incur the costs of carry-

ing out the process. Delays and costs incurred by land owners (and by the community as a whole) are of more serious consequence. It seems to us that if the costs are unreasonable, this stems from the fact that the legislation does not require municipalities to establish a suitable planning framework, and does not set out adequate rules for the conduct of development review.

11.39 Development review powers can be of considerable importance to a municipality. They can yield great benefit to the community in terms of amenity and convenience, but can also sharply reduce the certainty and predictability which are necessary to a fair planning system. We have concluded that the present system requires some significant changes. The scope of development review should be broadened in certain respects, and the base of the operation should be formalized. Municipalities engaging in development review should be required to have a suitable planning base for this purpose — a formally adopted planning policy statement that sets out clearly the objectives which are to be achieved through the process of development review, and the principles that will be employed in carrying it out. As with all other municipal planning statements the development review policy should undergo the normal process requirements: notification, public consultation, receipt of objections, and appeal.

11.40 The scope of development review under the Act should be broadened and made less particular. Broadly speaking, there are four general aspects of development that should be of concern: urban design; environmental impact; access and circulation (vehicular and pedestrian); and the operation and maintenance of facilities for public and semi-public use. The specific items listed in the Act are pertinent to one or another of these general categories, but they are not necessarily the only matters that may legitimately warrant consideration. We propose that the Act be restructured to define the scope of development review and development conditions in terms of these four general categories; that municipalities be required, in their planning statements, to establish the specific objectives they wish to achieve with respect to any or all of these categories; and that they then be allowed to deal with any particular aspect of these categories for which their planning statement provides a policy and operational framework.

11.41 It is particularly important that the supporting planning statement deal with the basis on which the municipality will require the conveyance of property (e.g. for road widenings) or the payment of financial levies. As discussed earlier, it is our basic proposal that whatever planning instrument is used, the imposition of conditions for development approval should be carried out only within limits set out in the municipality's formal planning policies.

11.42 Section 35a should be recast to provide for the exercise of development review directly by means of a development review by-law, rather than by amendment of the municipal zoning by-law as is now the case. The Act should stipulate that development review by-laws must include the following: the objectives to be served by the by-law; the classes of development subject to development review requirements and the geographic areas to be covered by development review; design and other criteria to be applied in deal-

ing with applications; and the procedures to be followed by applicants, including an adequate description of the details to be illustrated in drawings and plans. Like the development review policy, the development review by-law itself should also undergo the normal process requirements before adoption: notice, public hearing, receipt of objections and appeal.

11.43 While it is important that the council set out in advance the design criteria to be employed in dealing with applications, the design aspects of a particular proposal (perhaps one of major significance) could lead the council to conclude that the criteria should be altered. This would require that the planning policy be amended, following the normal process requirements. In such a case the council should then be able to employ the revised criteria retrospectively to that particular application, if it concludes that the resultant public benefits will substantially outweigh any hardship to the applicant. Such a decision should of course be subject to appeal. A council should not, however, be able to apply design criteria retrospectively to other applications that have received outline approval, as we describe below.

11.44 There should be a specified time period in which development review applications must be dealt with. We think that for ordinary projects, a period of 60 days would be appropriate, and we propose that the Act specify that if an application has not been dealt with in 60 days the application should be deemed to have been approved.

11.45 Complex buildings or large-scale development projects may require different treatment. For this kind of project, an applicant should be able to receive assurance that his proposal is generally acceptable, before he is required to undergo the expense of preparing detailed plans. At the same time, it is necessary that the municipality does in fact have an opportunity to deal with plans in sufficient detail to achieve its development review objectives. We propose that the Act permit municipalities to issue an outline decision, or decision in principle, within the 60-day period, which will be binding for a stipulated period (perhaps 18 months). On the submission of the applicant's final plans, there should again be a 60-day period within which the municipality must make its final decision, failing which the application should be deemed to have been approved. Where outline approval has been given, the Act should require the final decision to be consistent with the outline decision.

11.46 Individual development proposals undergoing development review under a Section 35a by-law are now not subject to public process requirements. There is no requirement that any parties other than the applicant be notified either of the application or of council's decision. The only appeal provided is to the applicant, who may appeal to the Municipal Board a council's failure to approve the application or to enter into a development agreement, or the terms of the proposed agreement. The question is whether this is adequate, or whether councils should be required to notify other interested parties of each proposal under development review, and to hold public hearings and receive public objections on individual proposals.

11.47 It can be argued that the proper area of public or third-party concern with potential development is expressed at two earlier stages: the adoption of the development review by-law which establishes the basis on which the council will deal with individual proposals, and the enactment of the zoning by-law which establishes the specific use, height and density to be allowed on the given property. Having made these decisions, on which there has been public consultation, the municipality is committed to a particular kind of development for the property. It would be very costly, with a high potential for delay and for irresponsibile council behaviour, to require that the specific development proposal for the property be subjected to public notice, hearing and possible objection and appeal. It can be presumed that this was the basis for the present structure of Section 35a, which does not require public consultation on individual development review applications.

11.48 The converse argument can be made that while the development review criteria and the individual zoning provisions have indeed undergone public scrutiny, it is the actual development on the ground which is of concern to neighbouring or nearby owners and tenants. This argument holds that it is the way a project is designed that determines its actual impact on adjacent or nearby properties, that people have a right to be notified of individual proposals and to present their views and lodge their objections.

11.49 The Committee has been unable to reach an agreed position on this matter. A majority of the Committee feels that the normal process requirements for the development review by-law and individual property zoning provide adequate protection for the potentially affected parties, and that on balance it is more important to ensure reasonable certainty in the development review process than to allow the public a voice on each specific development proposal. A minority of the Committee feels that on balance the disadvantage of putting each proposal under public scrutiny is outweighed by the need to provide potentially affected persons with the right to present their views on the proposal. The Committee majority recommends that Section 35a not be changed in this respect, and that there be no requirement for public notice and hearing on individual development review applications. The Committee minority recommends that Section 35a be amended to require that development review applications undergo the normal process requirements of notice, council hearing, receipt of objections and appeal, under procedures to be established by the Minister.

11.50 Despite our proposal that the scope of development review be broadened to embrace all matters relating to urban design, we do not agree with the submissions that building height and density should come within the purview of Section 35a. These are precisely the matters, in addition to use, for which both the land owner and the community at large require certainty. These items are now controlled in a conclusive way in the municipality's zoning by-law, and should not be subject to discrete determination on a site-by-site basis.

11.51 We are also unable to accept the proposal that an individual dwelling or small-scale housing development (under 25 units) should be subject to design review. The purpose of development review is to allow the municipality to con-

trol the impact of significant developments that cannot be dealt with adequately under the general zoning regulations. So as not to turn a general zoning system into a universal development permit system it is necessary to establish a cut-off point. Given the characteristic forms of residential development in most Ontario communities, we think the 25-unit limit is satisfactory for this purpose. The same considerations should also apply to small-scale commercial and industrial establishments. We propose that the Act be amended so that industrial and commercial establishments with less than, say, 10,000 square feet of floor area are exempt from development review under Section 35a.

11.52 As the Act now stands, a municipality may not exempt from development review any particular class of development that may occur within the area designated for development review. We do not see the need for such stringency. A municipality might well come to the conclusion that for some particular reason certain classes of development, such as assisted housing or senior citizens' housing for example, should not be subject to development review. Assuming that the council does not reach this position arbitrarily, but establishes the basis for this position in its formal development review planning statement, there is no good reason why it should not be able to exempt that particular class of development from the development review process. We propose therefore that the Act be amended to allow municipalities to exempt from development review any class of development that would otherwise be covered by the provisions of Section 35a, in accordance with the formal planning statement governing development review in that municipality.

11.53 We stated earlier our conclusion that it is not advisable to replace the present zoning system with a system of development permits. We have proposed instead improvements to the present zoning system which will allow more satisfactory use of interim controls and more effective use of development review. We are confident that these will serve to enhance the municipal ability to regulate development in accord with their adopted planning policies, while providing to property owners and the public at large the certainty and predictability that we feel they are entitled to.

12 subdivision approval

12.1 The system of subdivision approval under *The Planning Act* provides an indirect but reasonably effective means of public regulation of land development. It is indirect because it does not provide the actual permission for land to be developed, but deals instead with situations in which, as a practical matter, the land must be divided before it can be developed. The system is effective, from a community standpoint, because it ensures an adequate degree of public authority involvement in the private development of land. The process of subdivision approval establishes the conditions under which land is to be brought into development, the basis for determining its development use, and the street and lot pattern of the community. It also provides an effective vehicle for securing the community infrastructure for development — the necessary streets, services and public facilities. The subdivision approval process does not directly establish the time at which a particular piece of land will be developed, but it does determine the earliest point at which development can, as a practical matter, take place.

12.2 While the system is relatively effective, it has some serious problems. The land developer is often confronted with inordinate delays that are inherent in the discretionary approval process, and with conflicting demands from the multiplicity of agencies involved. The public at large finds the system difficult to comprehend because of the different approvals required for development to take place. In most cases it requires a considerable degree of expertise, both public and private, to get the system to work so as to produce the desired results from the standpoint of the developer, the governments (municipal and provincial), and the interested public.

12.3 We have reviewed the possibility of instituting a different subdivision system geared more directly to development permission. In such a system, land development (which could be defined to mean the alteration of terrain and the installation of roads and services as well as the erection of buildings) would only take place through a subdivision development permit. Such a permit would not be granted until all required municipal services were available and other specified conditions had been met. Subdivision development permission would be a single commitment for the subdivision of land, its development, and its future use. Separate rezoning approval, which is now frequently necessary, would not be required; a major inefficiency of the present system, resulting from the fragmentation of authority and the multiplicity of approvals, could thus be avoided.

12.4 Within our terms of reference, we have not been able to examine the full implications of instituting such a system, or to identify clearly its likely costs and benefits. We think that a detailed study of an alternative form of subdivision control is warranted, and we recommend this to be undertaken. At

this time, however, we are more concerned with identifying the main deficiencies in the present subdivision control system and making specific proposals to correct them.

12.5 The approval of subdivision plans under Section 33 of the Act is closely related to the granting of land separation consents under Section 29. This subject is discussed in Chapter 13. In the present chapter we are dealing with some of the main problems that we have identified concerning the approval of subdivision plans, including particularly the circulation of subdivision plans, the setting of conditions for approval, the criteria used in determining whether plans are to be approved, and the question of school and park sites in subdivisions. In addition a number of technical improvements to the subdivision approval process are dealt with in Part III of the report.

Circulation of plans and consultation

12.6 There has been a significant increase over the years in the number of separate public agencies to which subdivision plans are circulated. This extensive circulation has contributed to the complexity of the subdivision approval system. Different agencies sometimes provide varying or even contradictory comments on the same matter, for example on storm drainage or highway noise, which makes it difficult to satisfy the requirements of all the agencies commenting on a given subdivision plan. As a result, the negotiation process can be very time consuming and costly for the applicant, and ultimately for the subdivision resident to whom the costs are passed on. It has been suggested that the number of public agencies to which subdivision plans are circulated should be reduced, and that in order to reduce overlapping or duplication of requirements, some way should be found to limit the specific matters considered by the individual agencies.

12.7 The Act now authorizes the Minister to confer with any public agency or other party that "may be concerned" with a particular subdivision proposal. The agencies that are circulated are self-selected to some extent. Individual ministries and other bodies, such as conservation authorities or school boards, are concerned with land subdivision and development because of legislation which sets the statutory scope of their interests. The Housing Minister's discretion in choosing whom to consult is thus to an extent predetermined. But allowing the Minister to exercise certain discretion in determining whom to consult has served to accommodate new or changing interests on the part of the different ministries or other public agencies. Despite the multiplicity of bodies being consulted, it is considered by the ministry that the system of discretionary circulation works well, both in keeping the circulation of plans within manageable limits, and in allowing enough flexibility for new or emerging public interests to be accommodated.

12.8 Where subdivision approval authority is now exercised by municipal councils, the legislation does not stipulate which agencies are to be consulted. The current regulations delegating subdivision approval power to a number of regional municipalities simply require the council to indicate which public agencies have been consulted, or to specify the reasons for failing to consult on a specific subdivision plan. The municipality theoretically has a full range of choice: it may elect not to consult with any ministries or other bodies, or

to consult with selected bodies, or to consult all ministries and other bodies normally circulated by the Minister. The underlying assumption appears to be that municipal action in this regard can be policed by the threat of either recalling the particular subdivision plan, or recalling the delegated subdivision approval power itself.

12.9 Though the system may work reasonably well where the Minister is processing subdivision plans, we do not think that similar discretion as to who is to be consulted should be given to municipalities exercising subdivision authority. It should be a matter of provincial concern that all the bodies with a legitimate interest in subdivision development, and only those bodies, be consulted as to their requirements. This responsibility should not be left to policing by the implicit threat of recall. The best way to ensure suitable consultation is to stipulate, through regulations, the agencies to which subdivision plans are to be circulated and from which comments are to be received.

12.10 These regulations should also apply to subdivision plans being dealt with by the Minister directly, where the approval authority has not been passed on to a municipality. The objective should be to establish a system of circulation and consultation which is uniform and consistent, so as to provide consistent treatment to all subdivision applicants and also ensure all relevant public bodies of a suitable opportunity for consultation. We propose that the Act be changed to direct the Minister to establish through regulations the agencies to which various classes of subdivision plans are to be circulated, and that he be given authority to vary the list of circulated bodies where he finds this is appropriate in specific situations, for stated reasons. The regulations should also establish a time limit within which agency comments are to be submitted, as is now the case where regional municipalities are engaged in subdivision approval (60 days).

12.11 The other main submission concerning consultation is that precise limits be set on the specific matters that individual agencies can deal with in their review of subdivision plans. We do not think that this is feasible or necessary. The bodies commenting on subdivision plans are restricted to concerns that fall within their statutory responsibility. Even with such a restriction, more than one body can be concerned with aspects of what is essentially the same question, e.g. storm drainage or some other aspect of environmental protection. We think the problem lies not in limiting the matters that an individual agency may consider, but in determining the extent to which each agency's views are to be taken into account. It is currently the Minister's responsibility to sort out the various comments, to reconcile overlapping or conflicting requirements, and, in a technical sense, to establish the conditions under which a subdivision may proceed. With delegation to municipalities, accommodating or reconciling the views of different public bodies, and particularly of different provincial ministries, is likely to be a complicated task. It should be made clear that it is the council's responsibility to decide what weight to give to each of the comments it has received. The municipality exercising subdivision approval powers should not simply act as a "post office". It should be made clear that it is only consulting the various agencies and not being directed by them.

12.12 The Act now provides that after consultation, the Minister is to settle a draft subdivision plan he believes "will meet all requirements" of the bodies that have been consulted. We think this requirement is too restrictive on the Minister, and is even less acceptable where it is the municipalities that are approving subdivisions. The stipulation is too directive; it can unnecessarily limit the municipality's ability to sort out the requirements of the various agencies and to exercise its own discretionary judgment. Rather than directing municipalities to settle plans that in their judgment "meet all requirements", it would be more appropriate to include the comments and requirements of the consulted agencies among the various matters which the approving authority (municipality *or* Minister) is to have regard for in dealing with the plan. These matters are now listed in Section 33(4) of the Act, and we propose that this section be expanded to include, among such matters, the views and requirements of the bodies to whom the subdivision plan has been circulated.

Draft approval and final approval

12.13 The Act does not specifically define "settlement" of a draft subdivision plan but it is clear, from the various provisions of Section 33, that settlement of the plan means, in effect, to determine the specifics of the plan and the conditions under which it will be approved. When the plan has been settled, the Minister may give the plan draft approval, following which the applicant is required to satisfy the stipulated conditions. When this has been done the Minister may give the plan his final approval.

12.14 The theory underlying this two-stage process appears to be straightforward. Draft approval is a form of approval in principle, which is sufficiently firm and conclusive for the subdivider to proceed without undue risk to complete the property assembly (if needed); to finalize his financial arrangements; and to undertake the necessary surveying and detailed engineering design work. Final approval is the action which confirms that the details of the subdivision design are satisfactory, and that the stipulated conditions have been met.

12.15 In an increasing number of cases, the process does not work out this way. It is now a common practice to provide draft approval of a plan with several "subject to approval" conditions. Thus, the Minister's approval of the final plan will be conditional on the subdivider having secured prior approval from a number of other bodies; the final plan will be approved by the Minister, subject to approval by the municipality, by the conservation authority, by one provincial ministry or another. Where draft approval was originally intended to provide a credible form of approval in principle, it is now frequently little more than a "ticket to enter the race" (in the language of one of the submissions made to us). It is not uncommon for a subdivider to obtain draft approval and to work on detailed plans for a year or more, only to find an agency raising objections which question fundamentals he believed had been resolved months before. "Back to square one" is a recurring theme, but if the process is to have any credibility, it should not be the theme at the final approval stage.

12.16 The process is time consuming and costly. This is not necessarily a defect; to produce a satisfactory subdivision plan may well require intensive, costly and extended work of one kind or another. But the costs and delays should not

be lightly incurred. The process also lacks accountability to an extent. This is even less acceptable. It is the Minister to whom the legislation assigns subdivision approval authority (which he may delegate to municipalities), but the approval *responsibility* has in many cases been effectively spread out over a number of different agencies — the bodies whose prior approval must be secured before the Minister's approval will be forthcoming. We have already noted that the interests of these agencies in particular plans are legitimate, and the Minister should certainly be obliged to take these interests into account. It is less certain that he should, as a matter of practice, not simply take account of these interests but, in effect, require that all of these disparate interests be uniformly satisfied before he will give approval — in effect, to provide a blank cheque to the agencies consulted.

12.17 We are making two proposals in this regard. First, we believe the Act should be far more specific and should provide much better guidance as to the nature of draft approval. The Act should stipulate that draft subdivision approval is to cover the following kinds of matters: the street pattern and general layout of lots in the subdivision; the general network of underground services; the uses to which the subdivided parcels will be put; and the specific conditions which the subdivider is required to satisfy. We advance these as illustrative, rather than conclusive definitions. There may be other matters appropriate to draft approval, and we expect that in its consideration of our report the government will receive useful opinions on this matter. Our point is that draft approval be defined so as to constitute genuine approval in principle, and that this definition be contained in the Act itself, rather than being totally a matter of discretion, as it now effectively is. As with almost all the other matters we have dealt with, our recommendation that subdivision approval be made a municipal rather than the Minister's responsibility makes the need for clear definition within the Act that much more essential.

"Subject to approval"

12.18 Our second proposal is intended to limit the scope of "subject to approval" conditions. We appreciate that a given agency may not find it feasible to establish its requirements conclusively until it has been able to examine detailed plans, and that only at such time can it judge whether its interests are affected unfavourably. The agency may even then require further studies from the subdivider to assess various impacts more precisely. If "subject to approval" conditions are to be retained, however, they should be made more exact. The Minister (or municipality) should be required to specify the precise areas in which the particular agency's approval is to be secured, and the standards or criteria that are to be employed by that agency in assessing the final subdivision plan. In short, the approving authority should be issuing the specifications for compliance with the "subject to approval" condition, rather than leaving judgment as to compliance an entirely discretionary matter for that agency.

12.19 If an agency requires specific studies of one kind or another to assess the likely impacts of a given element of the plan, the Minister's condition should establish the specifications for these studies: their nature, what they are intended to demonstrate, and the criteria or performance specifications against

which impacts will be assessed. In sum, if an agency's approval is to be made a pre-condition for the Minister's approval, the boundaries within which that agency will exercise approval should be drawn as tightly as possible. The system should operate so that any discretion which is exercised is that of the Minister, not that of the agencies whose requirements he is taking into account.

Conditions for final approval

12.20 The Act allows the Minister to impose conditions that the subdivider must satisfy in order to obtain final approval of his plan. The permissible scope of conditions that can be imposed is defined to include the following: the dedication of land for parks, internal streets and the widening of existing boundary roads; execution of an agreement between the subdiver and the municipality, dealing with the provision of matters "the Minister may consider necessary", including municipal services specifically; and finally, any other conditions which in the Minister's opinion are advisable. There is little problem with the imposition of conditions concerning land dedications and the provision of internal subdivision services, but there is considerable concern over the unrestricted scope of the other conditions that can be imposed on a subdivider. These conditions are, by and large, those which the municipality considers appropriate or necessary, and they are the conditions which the Minister, on the municipality's recommendation, incorporates in his approval as a matter of practice.

12.21 Operating under this broad discretionary unbrella, many municipalities have had the Minister impose conditions on their behalf which appear to have had a serious impact on the cost of subdivision development and which raise serious questions of consistency and equity. Of particular concern are common requirements that the subdivider construct works or facilities, such as bridges, roads, sewers and the like, which lie outside the boundaries of his subdivision, or the imposition of financial levies for such purposes. We are proposing in Chapter 14 that the Province establish equitable standards for the imposition of financial levies. The immediate question raised here is whether there should be any stipulated restriction on a municipality's ability to secure works or financial contributions for purposes *outside* the subdivision. The broader issue is whether there should be *any* statutory restriction at all on the municipality's ability to impose conditions, by way of the Minister. The present delegation of approval authority to some regions and our proposal that subdivision approval power be assigned to municipalities as a general practice make these questions even more pressing.

12.22 We have little doubt about the broader issue. An unconstrained ability to impose conditions is wrong in principle, and contains great potential for harsh, inequitable or even improper actions. Though the conditions set are technically those the Minister finds necessary or advisable, we do not favour a system that in effect requires the Ministry staff to police the municipality's actions in order to determine whether what is being done in the name of the Minister is in fact necessary or advisable. It is even less appropriate that there be unrestricted scope for setting conditions if our proposals are accepted, and it will be the municipality itself that will be directly imposing those conditions through its subdivision approval power. We believe strongly that there should be a statutory restriction on the permissible scope of subdivision conditions.

12.23 Determination of the desirable scope of subdivision conditions relates to the more immediate question of whether subdivision residents should be assessed a responsibility for works or facilities outside their subdivision. The answer to this in principle is no; the benefits secured from community services and facilities supplied to the community generally should be paid for through general taxation. In practice, however, the costs and benefits of services and additions to services cannot be that easily allocated as between the community at large and the particular subdivision which may have triggered the need for a specific service or service addition (e.g. a new library perhaps, or a fire hall addition). We also do not believe that the conditions imposed on subdivision approvals should necessarily be restricted, as has been suggested to us, to stipulated *physical* works or facilities. We feel the appropriate point to aim for is that the particular subdivision conditions bear a reasonable relationship to the development of that subdivision. We propose therefore, that the present provision allowing the Minister to set conditions which in his opinion are "advisable" be replaced by a provision allowing the Minister (or the delegated municipality) to impose only those conditions which he concludes are reasonably related to the need for facilities generated by the particular subdivision. This restriction should apply as well to the matters that may be contained in subdivision agreements.

12.24 We recognize that wording along these lines may open the way for increased litigation and possibly slow down rather than speed up the subdivision approval process. But so long as the approving authority in forming its opinion does not behave arbitrarily or whimsically, it is not likely that its decision would be open to question in court. Other grievance resolution procedures, utilizing the Ontario Municipal Board, are available as well. In any case we are confident that the potential costs of occasional litigation will be far less than the real costs, financial and otherwise, arising from the unrestrained, unpredictable, uncertain and inconsistent process as it operates today.

Extension or suspension of approval; change in conditions

12.25 Draft approval of a subdivision plan now lapses if the subdivider has not secured final approval within three years. The Act allows the Minister to extend this period, and he is also able to suspend draft approval prior to the 3-year date if he chooses to do so. The Act also allows the Minister, at any time prior to final approval, to vary the conditions he has set as part of his draft approval. These are suitable provisions. It is necessary to set a reasonable time limit on subdivisions so that a municipality is not confronted with the consequences of an approval that may have been given much earlier but which is no longer appropriate under new circumstances. The Minister should also be able to alter the conditions so that he may have some flexibility for dealing with changing circumstances.

12.26 The rights of parties who may be affected by the Minister's decisions, however, are not clearly established. Though affected parties are usually notified of impending ministerial actions concerning suspension, extension or change, the Act does not require this, nor does it provide such parties with a formal means of presenting their views on the matter. We think the desirable principles are straightforward. When a subdivision approving authority — the Minister or a municipality — intends to suspend or extend draft approval, or change the conditions of approval, it should be required to notify affected

parties of this intention — the subdivider, the municipality, and the other agencies consulted about the plan. Persons who believe they will be adversely affected by the proposed action should be able to requisition a hearing before the Municipal Board, and the Board's findings should be submitted to the approving authority for a decision.

12.27 An applicant should have the right to request an extension to his draft approval any time up to 30 days prior to its statutory lapsing. On receipt of this request, the approving authority should be required to consult with the various agencies involved in the subdivision. If it intends to refuse the extension application the authority should notify the applicant, with stated reasons; he should then have the right to ask for an O.M.B. hearing. The Board's recommendations should be sent to the approving authority concerned — the Minister or the municipality — which should then make the decision whether to extend the duration of the draft approval.

12.28 If an approving authority intends to withdraw approval of a draft plan prior to its statutory lapsing, or if it intends to change its previous conditions for final approval, it should be required to notify the subdivider and other affected parties, with its reasons for the proposed action. The subdivider or another affected party should then have the right to request an O.M.B. hearing, and the Board's findings should be submitted to the approving authority for its decision on the matter.

12.29 It is important that the practices and procedures concerning suspension, extension or changes in draft approval be regularized and formalized. Our proposed procedures reflect the general approach we have taken on all matters concerning the statutory decision process in planning matters. We believe that they will help to ensure protection of the rights and interests of all the potentially affected parties: the municipality, other public bodies, and the subdivider himself.

Decisional criteria under Sec. 33(4)

12.30 Section 33(4) of the Act stipulates various matters the Minister must have regard for in dealing with a subdivision plan. These constitute, in effect, the criteria to be applied by the Minister in reaching a decision. Since the municipalities with subdivision approval authority are in practice exercising the Minister's powers, these are also the matters the regional municipalities must take into account in their subdivision processing. A number of individual items are specifically listed in this part of the Act. The list has aroused concern, either because the particular wording is in some cases considered too vague or imprecise to provide adequate direction to the approving authority, or because the wording does not deal adequately with the substance of the matter in question. We deal below with some of these specific items.

12.31 The first question to be considered is whether the list of matters to be regarded should be the same for municipalities approving subdivisions as it is for the Minister. It may be argued that it is less pressing to establish a precise definition of the decisional criteria to be used by the Minister than it is

for the municipalities, since the Minister is exercising the ultimate provincial authority. We believe, nonetheless, that it is important to secure the greatest possible consistency in the way subdivisions are processed throughout the Province, regardless of who is responsible for the processing; thus the criteria employed by the municipalities should be the same as those employed by the Minister. Our proposals below are therefore meant to apply to the consideration of subdivision plans by both the Minister and the municipalities.

12.32 Section 33(4) provides a general umbrella clause: regard is to be had, among other matters, for the "health, safety, convenience and welfare of the future inhabitants". Our earlier objection to this particular formulation in defining the scope of municipal plans applies also to its use for subdivision plans. The phrase is simply too general to have real operational meaning. The words are easily susceptible to arbitrary interpretation. They fail to provide any real direction to the approval authority as to situations in which subdivisions *should* be approved, or guidance to the subdivision applicant as to the situations in which subdivisions are *likely* to be approved.

12.33 It has been submitted that in municipalities which have no official plan, or which lack official plan subdivision policies, there is need for a general benchmark against which to judge subdivision proposals. It has also been suggested that a benchmark is particularly needed to circumscribe the way in which municipalities with delegated approval powers exercise their authority. We do not see that the health/safety phrase really constitutes such a benchmark, and we note that our proposal that subdivision approval authority be granted only to municipalities having suitable subdivision policies makes the need for a general benchmark less pressing. The subdivision policy is in fact the benchmark. We conclude that the health/safety phrase is too obscure as a guide to public action to be worth keeping. We have examined alternative wordings that might provide better direction and more certainty, but have been unable to come up with a suitable formulation. We propose that the umbrella phrase "health, safety, convenience and welfare" be dropped, and that the specific matters listed in the remainder of this sub-section of the Act be relied on to provide the required direction.

Conformity

12.34 Clause (a) of Section 33(4) requires that regard is to be had to the conformity of the subdivision plan to the official plan. Our concern for the legal significance of the term "conformity", which was expressed earlier in connection with official plans, applies also to subdivision plans. It is necessary that subdivision plans be dealt with in the light of the municipality's formal planning policies, but we do not think it is feasible to establish precise criteria for measuring conformity to those policies, apart from the use of common sense. We propose therefore that this wording be altered to provide that regard be had to the subdivision plan's *consistency* with the municipality's official plan or other planning policies. While the distinction between the two terms may appear to be small, we think it is an important one in operational terms.

12.35 The same clause requires that regard be had to the subdivision plan's conformity to adjacent subdivision plans. We think that what should be sought

is not conformity but *compatibility.* It is obviously desirable that adjacent subdivisions be compatible with respect to their supporting physical structure. We think this should be spelled out more accurately and propose wording such as: "compatibility of the proposed subdivision with the street, water and sewage systems established or to be established on adjacent lands". We propose also that municipal planning policies dealing with subdivisions include the physical criteria or other measures that will be used in determining the compatibility of subdivisions with adjacent development.

Premature; necessary

12.36 Clause 33(4)(b) requires that regard be had to whether the proposed subdivision is "premature or necessary in the public interest". The definition of "premature" presents problems. It is easy to claim that a new subdivision will be premature and therefore not acceptable, and difficult to persuade a reluctant council and a hesitant Minister that it is not. There are always good reasons for delay, especially if the purpose is to delay. At the same time, subdivision plans are often, in fact, premature.

12.37 It is not the concept of prematurity which presents problems but its application. We propose that where the Minister is dealing with subdivisions, he should be required by the Act to state his reasons for determining that a given plan is premature. Where the approval power is held by municipalities, it should be required that the determination of prematurity be based on the application of stated criteria, in the municipal plan or planning policy statement, that will be used for assessing prematurity.

12.38 We are also troubled by the concept of "necessary in the public interest". It can be exceedingly difficult to argue that a particular subdivision is "necessary", or to define specifically what constitutes the "public interest" in a particular subdivision. These are terms that can be usefully employed to reject subdivision proposals if that is the intent, but it is hard to use the phrase constructively. We are advised that the Minister does not, as a matter of practice, refer to these words as the basis for rejecting a plan, though the Municipal Board has occasionally used the term in dealing with appeals on separation consents. We think the term is simply too vague to be of benefit, and propose that it be deleted from the Act.

Physical and environmental matters

12.39 Clauses (d), (g) and (h) require that regard be had to the internal and connecting streets, to the conservation of natural resources and flood control, and to the adequacy of utilities and municipal services. In our view, the wording is too narrow; it does not adequately cover the scope of the physical matters which properly belong within this category, nor the way in which they should be assessed. We propose that these three clauses be replaced by a single clause which requires that regard be had to appropriate engineering, natural environment and conservation criteria. Where the Minister retains the power of subdivision approval, he should be required to specify in regulations the criteria he will employ. Where the subdivision approval power is exercised by a municipality, it should be required that these criteria be incorporated in the municipal plan or planning statement.

Schools and school sites

12.40 The requirement, in clause (i), that regard be given to the adequacy of school sites has become a particularly contentious matter. This provision worked fairly well during the major urban growth period of recent years, when there was a reasonable expectation that funds would be available to build new schools to meet the demands generated by new subdivisions. This no longer is necessarily the case. Funds are now difficult to obtain, and many school boards argue that the Act should be designed to ensure that actual school facilities will be available, not simply that required school sites are reserved in new subdivisions. Conversely, changes in population composition have led to vacant or underused schools, and in some cases to unused school sites. We have thus been presented with a picture, which may or may not be common but is certainly not unique, of children living in subdivisions lacking suitable school facilities, and of reserved school sites for which the children may never materialize, at least not in practical numbers. The process appears to be inefficient and uneconomic, in some cases at least, and there is some question as to whether the overall public good is being well served.

12.41 Many school boards have a related concern that the reservation of school sites in a subdivision plan does not in itself ensure that the site will be available for that purpose, at least not at a price which the board finds satisfactory. If the question arises as a matter of statutory interpretation, it is likely that the courts would rule that, having established that a particular school site is adequate for a school board's purpose, its "availability" to the board is outside the scope of the matters to be considered in dealing with the subdivision plan.

12.42 We have received three proposals regarding schools in new subdivisions. One is that the Act should require that regard be given, not simply to the adequacy of school sites, but also to the availability of school facilities in a given subdivision. A second proposal is that the clause in question be enlarged to require that regard be given, not only to the adequacy of school sites, but also to whether satisfactory arrangements have been made for their acquisition. Finally, we have been urged to include provisions that will stipulate the *price* at which school sites will be conveyed to school boards. In this regard, various formulas have been suggested, the general thrust of which is that school sites should be made available to school boards either free of cost, or at their value as raw land lacking any kind of development approval.

12.43 The question of school site costs is part of the broader question of the value of land required for public purposes, which we deal with in Chapter 15. Shifting attention from the reservation of school sites to the availability of school facilities is attractive, but questionable. We understand that in some cases, the Minister has in fact taken this question into account; where he has been advised that school facilities are not available or likely to be available to accommodate the children anticipated in a proposed subdivision, the Minister has on occasion refused to approve the subdivision. We can support in principle the proposition that it is the availability of schools as well as the reservation of sites which should be of concern; concern both that children have adequate schools and that the subdivision process does not operate so as to produce excessive or unnecessary school sites.

12.44 If, however, subdivision approval were to be made contingent on the determination that suitable school facilities will be available, school boards would in essence be given discretionary power with respect to the approval of subdivision plans. It could enable them to lever unfair advantages, such as extracting funds from subdividers, that go beyond the proper limits of the planning legislation. It would also provide those municipalities wishing to inhibit or frustrate the subdivision of land with even more effective tools for this purpose than are already available to them. There is little doubt that incorporating this kind of provision in the Act could serve to further increase the cost of serviced land and of new housing.

12.45 We believe that the problem is essentially one of provincial policy. It is the Housing Minister's responsibility to ensure that land subdivision takes place in a proper and equitable manner, and that housing is provided efficiently and economically. It is the Education Minister's responsibility to ensure that available education funds are used efficiently and economically, and that existing and future school plant is employed efficiently, economically and equitably. We can accept the principle that the Act should concern itself with the availability of both school facilities and school sites as a condition for land subdivision, but only on the premise that application of this principle to any given subdivision would be based on a coordinated approach by both ministries to the particular circumstances of that subdivision.

12.46 We are not recommending changes in the Act which require the possible adjustment of other ministry programs to make them work properly. We are therefore unable to recommend that the present wording of clause (i) be changed. We note that the suggested shift in focus to the availability of school facilities could turn out to be especially counterproductive where subdivision approval rests with the municipalities. We think that despite the increasingly serious problems that have been described to us, the clause as now worded has been operating reasonably well, and we recommend it not be changed. But we also think the two ministries concerned should give consideration to this question, in the light of demographic, financial and housing trends. We assume that only on the basis of such consideration, would it be possible for the government to reach a reasonable conclusion as to whether the Act should be altered as has been proposed.

Reasons for refusal

12.47 With the changes we have proposed, the decisional criteria listed in Section 33(4) should provide an appropriate range of matters that should be taken into account, by either the Minister or a municipality, in considering whether and on what basis to approve a subdivision plan. What is still lacking, however, is a firm direction as to how the criteria should be used. In addition to our specific proposals we think there should be a general requirement that, where a subdivision plan is refused approval on the basis of any of the factors listed in Section 33(4), the specific reasons for this rejection must be stated. Applicants should have an undisputed right to know why the assessment of a particular factor has led to a conclusion that the plan should not be approved. This will help an aggrieved applicant if he chooses to pursue resolution of his grievance. It will facilitate his making modifications to the plan that could satisfy the approving authority. And in any event, we believe that to require that reasons be given is essential to responsible decision making. We have

proposed this requirement with respect to other kinds of planning decisions, and find it equally applicable to subdivision decisions. We are also certain that this requirement should be placed on all subdivision approving authorities — the municipalities to whom this power is assigned, and the Minister in those cases where he has retained the authority himself.

Parkland dedication

12.48 A municipality may require that up to 5 percent of the land in a subdivision be conveyed to it for park purposes. It is now an almost universal practice to secure this dedication in the case of residential subdivisions, and it is an increasing practice in industrial or commercial subdivisions. Technically, this requirement is one of the conditions the Minister may impose in his approval of the plan, but the practice is now so common that it can be said to have passed from being one of the Minister's discretionary actions to being a standard requirement, at least with respect to residential subdivisions.

12.49 The 5 percent dedication has been a central feature of the Ontario planning system for decades. It derived from a commonly accepted standard that there should be 2½ acres of parkland for every 1,000 persons in a residential neighbourhood, and was intended to more or less yield this ratio where neighbhourhoods were developed at traditional low, single-family densities. The proportional land yield from the 5 percent dedication is of course much lower with higher densities of development. To overcome this deficiency, another provision of the Act, Section 35b, allows municipalities to secure parkland dedications at a ratio of one acre for every 120 dwellings. This can take place if the municipality has an appropriate park policy in its official plan, and can be applied by by-law to all residential development or re-development, not only development covered by subdivisions or zoning agreements. The higher ratio cannot, however, be applied to land in any subdivision from which the 5 percent dedication has already been taken.

12.50 It is justifiable to require that an increased amount of parkland (over and above 5%) be dedicated in relation to the population expected to use it. We see no reason why the principle of Section 35b should not be incorporated directly in Section 33, so that municipalities can secure the higher parkland dedication as a condition of subdivision approval, rather than by enacting a Section 35b by-law. This should be allowed however only where the municipality has established a suitable basis for securing the higher amount. We propose that Section 33 be amended to provide that as an alternative to the normal 5 percent dedication, municipalities may require the conveyance of parkland in residential subdivisions at a rate of up to 1 acre per 120 dwellings, provided that they have formally adopted a plan or planning statement which establishes the basis for requiring the higher amount and the park development program in which the dedicated parklands will be used.

12.51 The practice of requiring parkland in commercial or industrial subdivisions requires clarification. While it can be appropriate to require public parks for the benefit of employees and visitors in industrial or commercial areas, we have been unable to establish a satisfactory planning rationale for using the 5 percent ratio for this purpose. We do not think it is satisfactory for munici-

palities to be able to use this technique, as now sometimes occurs, to secure from industrial or commercial development cash funds (equivalent in value to the 5 percent dedication) which are then used for municipal park purposes elsewhere, totally unrelated to the needs of the particular industrial or commercial area from which the funds were generated. Compulsory parkland dedication in non-residential subdivisions should be permitted only where the municipality's planning policies establish an appropriate basis for this action, and where such parks are specifically included in the municipality's parks program.

12.52 We propose that municipalities be allowed to require the dedication of parkland in industrial or commercial subdivisions only where the municipality has formally adopted a relevant planning policy. Since the amount of parkland required for the benefit of industrial or commercial employees and visitors should not be based on residential factors, it is not appropriate to use the 5 percent provision in the Act for this purpose. The actual amount of parkland that can be secured from industrial or commercial subdivisions should be set in the municipality's planning policy statement, but the Minister should establish, through regulations, the maximum limit within which municipalities can require industrial or commercial parkland dedications.

Cash-in-lieu

12.53 The Act allows municipalities to accept from subdividers funds equal in value to the lands (5 percent or 1 acre per 120 dwellings) that would otherwise be conveyed for park purposes. This should give municipalities flexibility to deal with small subdivisions, for which the dedicated land itself could be negligible or useless, and helps them to establish parks on a neighbourhood or district basis rather than subdivision-by-subdivision. Acceptance of cash-in-lieu of parkland requires in each case the explicit approval of the Minister, or the region with subdivision approval authority. However, where appropriate policies have been established setting forth the circumstances under which cash will be accepted in place of land, the municipality should not have to have each transaction subject to Ministerial review. We propose that municipalities which have adopted suitable cash-in-lieu policies as part of their formally adopted subdivision policy statements, should be exempt from the approval requirement. The question of the value on which cash-in-lieu is calculated is discussed in Chapter 14.

12.54 As the Act now stands, municipalities may *accept* cash payments in lieu of parkland, but it has been ruled in an Ontario Municipal Board decision that this provision in the Act does not give municipalities the authority to *require* such payments as a condition of subdivision approval. We do not see the rationale for such a distinction, and think it should not be continued in the Act. If it is acknowledged that cash payments can in certain circumstances be a suitable substitute for actual parkland, municipalities should be allowed to require such payments just as they can now require the conveyance of parkland. We propose therefore that the Act be amended so that cash payments in lieu of parkland can be required as a condition of subdivision approval, either on the basis of a formal planning policy statement, or with the Minister's approval in the absence of such a statement.

Use of parklands and park funds

12.55 The Act now provides that the dedicated parklands can be used for other public purposes if the Minister approves. These lands can also be sold by the municipality. The Minister must approve the sale if it takes place within five years of the subdivision approval but not thereafter. Funds secured from such sales, and cash-in-lieu funds, can be used to acquire other parklands without the Minister's approval. With his approval, the funds can also be used to develop other parklands, or to acquire lands for other public purposes. Where subdivision approval is exercised by a regional council in place of the Minister, the various ways of disposing of parklands or park funds with the Minister's approval are subject instead to the approval of the regional council.

12.56 Several concerns have emerged. There is first, considerable concern that the Minister's approval is required if a municipality wants to use park *land* funds (from cash-in-lieu or from sale of park sites) for park *development* purposes (such as playgrounds, ice rinks, swimming pools, etc.), or for building community centres. Second there is concern about requiring ministerial approval for using parkland funds to acquire lands for other public purposes. There is also concern that parklands secured through subdivisions cannot be sold, in the first five years, without the Minister's approval.

12.57 The basis for requiring the Minister to approve these various actions is presumably that since the lands or funds were originally secured as a result of a subdivision condition which he had imposed, only the Minister should allow the condition subsequently to be varied. However, as we have noted, the Minister's "condition" is to a large extent technical only; the act of requiring 5 percent parklands in residential subdivisions is so universal that it is almost tantamount to being a statutory requirement. The necessity for subsequent ministerial approvals should therefore be examined more closely.

12.58 We think the fundamental issue concerns benefit and equity. The parklands or equivalent funds originally secured through subdivision approval were clearly intended to benefit the residents of that subdivision. They were part of the subdivider's financial responsibility for the cost of new development and were, in effect, paid for by the residents of the subdivision. Where the funds involved are to be clearly used for park or recreational facilities of a capital nature which will be of direct benefit to those residents, there should be no need for ministerial review. We appreciate that it is difficult to assign "direct benefit" in precise quantitative terms, but reasonable principles can be established for determining how subdivision residents will benefit from different kinds of facilities. We propose therefore that where a municipality has established beforehand, in a formally adopted policy statement, the criteria and procedures that will be used in determining the benefit to be gained from the use of parkland funds, it should be exempt from the requirement of ministerial approval for the use of such funds for park development purposes.

12.59 The use of parkland funds to acquire land for other public purposes may be somewhat more complicated. These other purposes are in practice likely to be related to general community needs, rather than exclusively to the needs of the subdivision from which the funds were generated. We do not think it is

feasible to define in legislation the broad kinds of public uses that can in all cases be deemed to benefit particular subdivision residents as well as the general community. In practice, therefore, each case should be dealt with on its merits. Despite our basic philosophy favouring local autonomy in local planning matters, we have reluctantly concluded that case-by-case determination does, in fact, mean ministerial review. We propose, therefore, that the requirement that the Minister approve the use of parkland funds for other than park or recreational purposes be retained, including using the money to buy land for other public purposes. To ensure equity and establish a basis for the redress of grievances, the Minister should be required in coming to his decision to have regard for whether the proposal will be equitable and of benefit to the residents of the subdivision from which the funds were originally secured. Where he refuses to approve the municipality's proposal, he should be required to set out his reasons.

12.60 We see no need to require the Minister's approval for the sale of park sites in the first five years, but not thereafter. This is again part of the technical proposition that as it was the Minister who had determined that a particular site should be a park, it should therefore be the Minister who decides that this is no longer the case. Since municipally owned land cannot in any case be sold unless it is not required for municipal purposes, we see no real need for ministerial approval of such sales, even within the first five years.

12.61 A more critical issue is whether the park site may be used for different (non-park) public purposes. The first question is whether the use of the site benefits the residents who, in effect, paid for it; since the site is by definition within the subdivision, this is probably not a serious problem. The issue therefore comes down to whether to allow municipalities sufficient flexibility to change their minds about how to use public lands in a subdivision, or to require that their actions be subject to direct review by the Minister. As municipalities are likely to have better knowledge of the specific circumstances in each case than the Minister, we see no reason for municipalities not to be able to exercise autonomy in this matter. We therefore propose that the use of dedicated park sites in a subdivision for other public purposes be allowed, without requiring approval by the Minister.

12.62 The final question concerns the authority of the regional councils, or other municipal councils to whom subdivision approval authority may be granted. Where ministerial approval of specific actions concerning park sites and funds will still be required under our proposals, there is no reason why that authority should not be exercised by regional councils who are in effect acting in place of the Minister. The question is more difficult if municipalities are allowed to approve their own subdivisions, as we have recommended. Here again though, we think the basic principle is sound. It should not be necessary, in these cases, for the Minister or an upper-tier council to have to approve the specific actions concerning parklands and disposition of parkland funds. We believe the general power to review and veto municipal actions in the case of the province, and to review and object to municipal actions, in the case of upper-tier councils, should provide an adequate check on local council behaviour.

13 land separation consents

13.1 The subdivision approval process discussed in Chapter 12 provides the means of dividing large properties into smaller parcels — individual lots and blocks. Land can also be subdivided under Section 29 of the Act, which provides machinery for creating individual properties that are qualified to be sold or otherwise conveyed. The bridge between these two forms of subdivision approval — registered plans and separation consents — is the provision in the Act which stipulates that a committee of adjustment or land division committee (or the Minister in certain circumstances) may consent to the transfer of an individual property when it has concluded that for the particular application a plan of subdivison is not required for the proper and orderly development of the municipality.

13.2 Separation consents are sought principally in rural areas, though they are also used to divide up land in urban situations, mainly for infill properties. In rural areas the lot being created is most commonly a small section of a farm or other rural property on which the purchaser wants to build a house or establish some other kind of non-agricultural use. There is a common assumption on the part of prospective purchasers that if the property transfer is permitted, the development of that property for the intended use is also permitted *ipso facto* (since that is the purpose for acquiring the property). Although the actual permission to use the property in a given way can be regulated by appropriate zoning, it has been found that this is not adequate to withstand indefinitely the inevitable pressure for development which arises from the fact that the transaction was permitted in the first place. The consent system thus operates on the premise that the control of property development in these rural situations is most effectively secured by controlling the actual property transfers. The evidence is that the system does in fact work this way, though it has been necessary to tighten up the legislation from time to time in order to deal with loopholes through which subdivision control is avoided.

13.3 The need to secure a consent can be troublesome in built-up areas where the interest of the applicant is not in developing a particular property but only in securing title to it, or in securing a property boundary adjustment. The main problem is that too many different kinds of transactions are caught up by the provisions of the Act — for example, the individual halves of semi-detached structures that happened to be registered as single rather than double lots on the original subdivision plan, or individual row house units that are similarly part of larger blocks on the registered plan. Certain kinds of transactions are now exempt from subdivision control, such as short-term leases for example. We have concluded that the range of transactions that are exempt from control should be broadened. Thus, to use the same example, the resale of semi-detached dwellings and row houses should not be required

to go through the cumbersome, time consuming and costly process of securing approval from the local committee of adjustment. Similarly, minor adjustments to property boundaries in built-up areas should not have to undergo the committee's inspection and decision.

Part-lot Control

13.4 The process involved is the imposition of part-lot control, that is the control of further division of blocks or lots in a registered plan of subdivision. The Act now establishes universal part-lot control. If a municipality wants to remove certain geographic areas from this control, so that property transactions in that area need not go through the consent or subdivision procedure, the Minister must approve an exemption by-law for that area. The implication is that this control is generally necessary or desirable from a provincial standpoint, and should be removed only where a suitable case can be made for its removal.

13.5 We have reached the opposite conclusion. We see no good reason why all people who want to carry out property transactions involving land that has already been subdivided should have to seek permission for these transactions, when they do not, in some clear and unassailable manner, alter the nature or character of the building or neighbourhood involved. The system which was in effect until 1970 proceeded on our assumption. Rather than providing for universal part-lot control, with the possibility of securing exemptions for specific areas, the onus was placed on municipalities to establish part-lot control in those specific areas where they felt such control was required.

13.6 We have reviewed the reasons for the change from the system as it previously operated, and have not found them conclusive. The previous system may have been considered risky from a provincial standpoint because it depended on municipalities to take the initiative in adopting part-lot control by-laws. But we think the potential costs that may be incurred if councils are able to refrain from part-lot control are not as great, overall, as the substantial individualized costs generated by the present system.

13.7 We have concluded that the previous system of part-lot control should be reinstated with some modifications. We propose that the Act be amended to provide that universal part-lot control will cease to be in effect as of a given date. The Act should allow the subdivision approval authority (the Minister or a municipal council), when it is approving a subdivision plan, to establish part-lot control on specific blocks of land in that plan. This power will afford the municipality the benefits of controlling subsequent subdivision of large blocks of vacant land, and will also allow them to secure necessary services and impose necessary conditions for development of such blocks. The Act should also authorize a municipality to institute part-lot control in specific geographic areas, subject to the normal process requirements of notice, hearing and appeal. This will allow the municipality to identify those built-up areas in which the prevailing lot and development pattern is such that a reserve subdivision control power is desirable.

Jurisdictional criteria

13.8 Another major area of concern involves the criteria for establishing whether a consent application may be considered. As noted, the Act provides that a committee of adjustment or land division committee may grant a consent when it considers that a plan of subdivision is not "necessary for the proper and orderly development of the municipality". This kind of a determination would be difficult to make in most situations, except perhaps in self-contained villages. It is in any case not one that should be made by a committee. Because the determination to be made is essentially a planning decision, this provision has the effect of turning the committee into a planning authority.

13.9 We have already stressed that the responsibility for establishing the planning framework for granting consents should rest with the municipal council, and have proposed that consents be granted only in accordance with the council's formal planning policies. The jurisdiction of consent granting committees should not extend to making these basic planning decisions. We propose that the Act be amended to provide that a committee may grant a consent when it considers that a plan of subdivision is not necessary for the proper and orderly development *of the land in question* (rather than of the municipality). This will serve to direct the committee's attention to the land being developed, which is a suitable area of committee concern, rather than to the development of the municipality, which is the municipal council's concern.

13.10 Our other proposals concerning consents are found in other sections of the report, mainly Chapter 4, dealing with the provincial responsibility for consents, Chapter 5 which concerns the allocation of municipal planning authority, and Chapter 8, dealing with consents in restructured upper-tier municipalities. In Section III of the report we are also making a number of proposals regarding technical and other improvements to the operation of Sections 29 and 42 of the Act.

14 development standards and requirements

14.1 The standards and requirements that are set through the various instruments are an issue of major importance. These standards and requirements are formally imposed in different ways, depending on the particular instrument involved. In the end though, irrespective of the particular instrument, unless there has been an appeal or reference to the Municipal Board, the standards and requirements applied to development proposals are usually those which the municipality itself has decided are appropriate and necessary. It is only when there is O.M.B. scrutiny that there is any external determination of whether the standards and requirements are reasonable or suitable. And only in the rare instances that they are reviewed by the Courts is there any external assessment as to whether they are valid in law.

14.2 We discussed earlier the extremely wide variations in the development standards and requirements imposed by municipalities. Zoning standards and engineering specifications vary significantly. Financial imposts differ from municipality to municipality. There is little consistency in the requirements for on-site and off-site works, services and facilities.

14.3 These variations reflect different kinds of local concerns. In general, there is a reluctance to impose any of the costs arising from new development on the existing residents of the community. There is also a desire to at least maintain, if not improve, the prevailing level of amenities in the community, as well as the level of assessment and property values. In addition, many municipalities use high and costly requirements to inhibit new development.

14.4 The prevailing practices raise serious questions. To begin with, there is the question of equity. We have concluded that the planning system does not operate to produce equality of treatment to persons in similar circumstances. The differential application of development requirements often leads to situations in which the new residents of a community bear disparate costs and receive disparate benefits both in comparison to existing residents and among themselves. It may not be possible to devise a system in which there is perfect equality of treatment between those bearing the cost and those receiving the benefit of development. However, because the system is almost always responsive to the perceived needs of the community's existing residents, it does not tend to provide equitable treatment to new residents.

14.5 The system also permits the imposition of requirements that bear no stated or logical relationship to the needs generated by particular developments. The scope of the process allows considerable potential for arbitrary municipal behaviour (tempered only slightly by the possibility of recourse to the Muni-

cipal Board, since development proponents usually find it more expedient to conform to a municipality's requirements than to contest them). The system accommodates various kinds of bargaining between municipalities and developers, but the costs are ultimately borne by owners and tenants who have in no sense been a party to the negotiations. The willingness of developers to accede to excessive conditions (sometimes termed "blackmail") does not necessarily serve the broad public interest. Given conditions of highly responsive local government, it is in effect left to developers to represent the interests of the new residents, but it is futile to expect developers to act successfully as their surrogates, particularly in periods of rising house prices when the costs of meeting standards can be incorporated in the dwelling price.

Provincial responsibility

14.6 We see a fundamental provincial interest in the question of development standards and requirements. Considerations of equity, access to housing and costs of housing are all at stake in the establishment and application of these standards and requirements. We assume there is a basic provincial responsibility to secure the equitable distribution of social and economic resources, and to ensure equality of treatment to all the residents of the Province.

14.7 We believe the provincial interest requires that there be provincial specifications for permissible municipal development standards and development requirements. We appreciate that this can be seen as conflicting with our basic proposal for local planning autonomy. In this instance autonomy must, we believe, be constrained by the fundamental provincial concern for equality of treatment and access to housing.

14.8 The Housing Ministry has recently carried out studies and initiated discussions regarding appropriate development standards. As the current efforts are not yet satisfactory to many municipalities, the determination of a consistent set of provincial development standards may require more extensive examination than has so far taken place. We assume that appropriate standards and specifications will have to be related to particular geographic and economic circumstances. However, we believe that the principle of provincially-determined development standards should be accepted now, on the assumption that the precise standards and specifications will be determined later.

14.9 The basic principle to be applied is that development standards and requirements should not exceed established health, safety and amenity needs. We do not expect that these standards will be uniform across the Province. However these needs are roughly similar within broad housing market areas, and the required development standards should therefore be reasonably consistent within such areas. Engineering design requirements and specifications should relate to established physical conditions and not be derived from considerations of local administrative convenience. Nor should site development standards imposed in an area derive from municipal financial considerations. Such considerations may be important in determining the rate of development in a municipality, but should not provide the basis for the standards governing such development. Crudely stated, "zoning by assessment" is not an appropriate principle for guiding municipal planning.

14.10 We propose that the Act be amended to require the Minister to establish, through regulations, the range of development standards that can be incorporated in a municipality's zoning by-laws and other development control instruments, and that can be imposed in processing development proposals. To provide for exceptional local circumstances, the Act should allow the Minister to alter the permissible standards and specifications for stated reasons, when a municipality demonstrates to his satisfaction that this would be appropriate.

14.11 Where there are regional municipalities or counties engaged in county-wide planning, they would be the appropriate bodies to determine consistent area-wide standards. The Act should require the Minister to assign the responsibility for establishing the standards to those upper-tier municipalities which request this authority. He should have the power to recall this authority for stated reasons, if he believes that the prescribed standards and requirements are not appropriate. It should be a provincial responsibility to secure reasonable consistency in the development standards that are in force in neighbouring regions, and in neighbouring municipalities which lie outside regional or county planning jurisdiction.

Scope of standards and requirements

14.12 Development standards and requirements should be applied in a consistent fashion. All of a municipality's planning instruments — zoning by-laws, subdivision approval, development review and consents (with some exceptions discussed below) — should employ substantially similar standards and requirements. Much the same requirements should be applied to new development and to redevelopment. Similar specifications should be applied to all the different kinds of requirements municipalities impose as conditions of development approval: financial levies and imposts; conveyance of land or cash-in-lieu of land; and the direct provision of works, services and facilities.

14.13 The common practice of using financial levies to make up existing shortages in municipal facilities or services amounts, in effect, to the sale of development approvals for the financial benefit of the present residents of a municipality. This is not acceptable. Two principles should be adopted concerning financial levies and other requirements imposed as conditions for development approval. The first is that they "fairly and reasonably relate" to the particular development in question (in the words of a recent Court decision). The other principle is that a developer should not be required to provide or pay for the capital cost of physical works beyond what is needed to bring the site or subdivision to a condition suitable for the proposed occupancy. The regulations should require that levies be purpose-specific rather than general. Regulations should also prohibit the use of levies as a form of indirect taxation to raise funds for normal municipal functions, such as the operation of municipal services and facilities.

Exclusionary practices

14.14 Present development control practices commonly operate in ways that serve to exclude certain kinds of people from living in particular sections of the municipality. Two practices are employed. One is the use of minimum zoning standards and development specifications (such as engineering design standards) which effectively preclude the construction of dwellings for low

or moderate income occupancy. The other is zoning restrictions which prohibit specified kinds of occupancy such as group homes, or which forbid occupancy of dwellings by unrelated individuals or set limits on the number of such persons in a dwelling. The practical effect of such techniques as the use of narrow definitions of "family" in zoning by-laws is to regulate the life styles that will be permitted in a community.

14.15 These exclusionary practices raise two separate but related questions. The first concerns the propriety of practices that have the effect of allowing municipalities to determine who, or what kind of people, will be living in major sections of the community (or of determining, in effect, that certain kinds of people will be excluded from most parts of the municipality). The second question is the suitability of local practices that can have the cumulative effect of inhibiting the achievement of provincial or regional government policies concerning the provision and distribution of housing, and the provision and distribution of residential accommodation for special groups in the population.

14.16 We believe there are two governing principles to be applied. First, it is not a proper exercise of municipal planning authority to allow the residents of an area, directly or though their elected representatives, to determine who is not to live in that area. Second, it is not appropriate for local municipalities to carry out residential planning policies in ways which impair the achievement of provincial or, where applicable, regional housing policies.

14.17 We are not suggesting that municipalities should be required to secure homogeneous development throughout their area, or that the zoning by-laws and other controls should operate so as to preclude diversity in the distribution and characteristics of housing. We recognize that different sections of a municipality will, and should be allowed to, differ in their physical and social character. The concern is with the use of government powers to achieve exclusionary or discriminatory results.

14.18 We are making two general proposals. The first is that the Act should be amended to expressly forbid the exercise of the zoning power in ways which prohibit the occupancy of dwellings on any basis other than density. Restricting the kind of people who may occupy a dwelling by reference to their age, marital or family status, source of income, life style, or *any* personal characteristic, is not a proper use of planning authority and should not be allowed. A municipality may properly be concerned with the physical "performance" of a given residential use, but this can be dealt with through performance specifications in the zoning by-law (parking requirements, for example), through the municipality's maintenance and occupancy by-laws as they relate to health and safety, and through other relevant controls, such as noise by-laws.

14.19 The Act now allows municipalities to restrict the use of land and buildings to specific purposes that are set out in the zoning by-law. This is the conventional purpose of zoning by-laws. Municipalities are also authorized to regu-

late the "character and use" of buildings under Section 35(1)(4) of the Act, which deals generally with matters relating to the construction of buildings. The courts have held that under this provision municipalities may act to "ensure the preservation of better residential districts". On the basis of the precedent established in an earlier case in which this ruling was made, the Court of Appeal has recently ruled that it is valid under the Planning Act for a municipality to restrict the occupancy of a dwelling to "families" defined in such a way as to exclude unrelated persons from occupying that kind of dwelling.* We think this is unsuitable public policy. So as to prohibit zoning by-laws from being used in such an exclusionary manner, we recommend that the specific reference to "character and use" of buildings in Section 35(1)(4) either be deleted, or that it be rephrased in such a way as to restrict its application to the architectural qualities of buildings, and not to their occupancy.

14.20 The second general proposal is that in framing regulations on permissible development standards and requirements, the Minister (or the delegated region) should be required to take into account the following matters: 1) The extent to which given standards will operate to exclude poor people or special groups in the population from a particular area; and 2) The potential cumulative impact which given standards and requirements will have on the achievement of regional or provincial housing policies.

14.21 We are not proposing the setting of universal maximum zoning standards, but only that the Province and the regional municipalities be required to set an upper limit on the minimum lot area and floor area, and a lower limit on the maximum density, that can be established in major areas of new development. The regulations should also deal with minimum servicing requirements and engineering standards, and with such matters as requirements for garages, paved driveways and landscaping. These are the standards and requirements which, taken together, effectively determine a major area of municipal influence on the cost of new housing, and hence its availability to various sectors of the community.

14.22 We do not think it necessary or appropriate to place these limitations on the provision of all new housing in a municipality. They should be aimed, rather, at precluding the exclusion of newcomers from major areas of new development. They should therefore apply only to large subdivisions and redevelopment schemes. The regulations should delineate specific geographic areas in which the limitations will apply, and should be so framed as to exclude from their application new development that takes place through consent or infill in built-up areas (e.g. the development of vacant blocks in existing registered plans).

14.23 Concerning local planning actions that inhibit the achievement of provincial or regional housing policies, we appreciate that it is difficult, in an operational sense, to assess the potential cumulative effect of individual development

*The recent case concerns the definition of "family" in the North York zoning by-law (Regina vs. Bell, 1977). The earlier case was a decision of the Supreme Court of Canada concerning the Toronto zoning by-law (City of Toronto vs. Polai, 1973).

decisions. It is a matter of concern, though, that prevailing development approval practices do not as a rule allow any such assessment to be made. We have proposed earlier that there be mandatory monitoring of municipal planning programs; it would also be appropriate to require the Minister or the delegated region, as the case may be, to monitor the cumulative impact that the specific development standards in the area have on the implementation of the provincial or regional housing policy for that area.

Consents

14.24 When development conditions are imposed on consent applications, they should be applied only to the actual development parcel. This is not always the case today. For example, it is a relatively common practice to require the dedication of land for road widening across the total frontage of a farm from which an individual parcel is being severed. This is in effect a form of capital levy which we think is an improper exercise of municipal planning authority. We propose that the Act should stipulate that development requirements can be imposed, as a condition for granting a consent, only on the property which is being separated.

14.25 In built-up areas, where the purpose of the consent is to secure the adjustment of property boundaries or to facilitate property transfers, the application of development conditions on consents represents a special case. The practice is inherently discriminatory, in that the particular occupants are actually being required to contribute to the cost of services, facilities or road widenings for which their neighbours are not being charged. Because the circumstances surrounding urban consents can vary greatly, the regulations should specify that development conditions can only be imposed on urban consents on the basis of formal planning policy statements that establish the situations in which conditions may be imposed, and the specifications for such conditions.

Application fees

14.26 The fees that municipalities charge for processing development application can have a measurable impact on the production of housing, and raise serious policy issues. The Act now sets a maximum fee of $50 for consent and variance applications, but does not set any limit on application fees for zoning by-laws, subdivision plans, official plan amendments or other kinds of development applications. The practices vary widely. In many municipalities, only nominal sums are charged, but we have been told of at least one municipality where the application fee for processing subdivision plans can run over $100,000 for a single residential neighbourhood.

14.27 Two different basic submissions have been made to us. The development industry argues that the present unrestricted fee structure is in many cases being used for purposes totally unrelated to the actual costs of processing development applications, and that it thereby operates in an arbitrary, discriminatory way. The other submission comes from land division committees and committees of adjustment, most of which feel that the statutory maximum fee of $50 for consent applications is much too low. Figures that are suggested include $100, $150 and $200, as well as a proposal that there be no statutory limit on fees, with committees allowed to charge fees on a full cost-recovery basis.

14.28 We think there should be statutory limits to the fees that can be charged for processing development applications, and that they should be established through Minister's regulations. This would allow the government to adjust the fee schedule expeditiously as circumstances change, and would also permit the Minister to vary the fee structure in individual cases where appropriate.

14.29 A suitable fee structure can be established on the basis of either of the following principles: 1) Application fees should be set so as to recover for the municipality the marginal costs of processing particular kinds of applications; or 2) There should be an equitable distribution of costs between an unrestricted right to municipal staff services and an extraordinary demand made on such services by particular development applications. A suitable argument can be made for either approach or a combination of the two approaches. In the end, the main considerations should be the impact of the fee structure on municipal costs, which is usually related to the size and character of the municipality, and the impact the fee structure can be expected to have on development costs. We think that the Ministry should undertake an immediate review of this matter in order to establish an appropriate fee structure.

14.30 We are proposing that the Act require the Minister to establish regulations setting out the maximum fees to be charged for zoning by-laws, official plan amendments, subdivision plans, development review applications, consents and zoning variances. To allow for exceptional circumstances, the Act should authorize the Minister, on request by a municipal council, to vary the prescribed fees, with his reasons stated. The Act should also provide that until such regulations are established, or in the absence of such regulations, an applicant may appeal to the Minister the application fee charged by a municipality, and the Minister should be required to refer such appeals to the O.M.B. for a hearing and recommendation.

14.31 Under our proposal, the present maximum $50 application fee on consents and variances would be deleted from the Act and a substitute provision would be included in the Minister's regulations. Until this takes place, the suitability of the statutory $50 fee will remain an open question. We have reviewed the matter, but have found no conclusive way to establish what other sum would be more suitable.

14.32 It seems likely, however, that if the $50 application fee was considered suitable at the time it was set in 1971, a fee of $100 might be considered suitable today. We propose that the Minister establish regulations prescribing initially a maximum fee of $100 for consent and variance applications, and that he be authorized to vary this fee, stating his reasons, at the specific request of a municipal council. We view this as an interim measure, to remain in effect until the Minister has established a comprehensive fee structure for all of the different kinds of development applications.

15 compensation and reservation of land for public use

15.1 Payment of compensation for damage resulting from planning actions is a pivotal issue in resolving the conflict between the rights of property owners to use their land for their own benefit, and the community's right to have land used for the overall public good. The central questions are the extent to which property owners should be compensated for loss of the right to use their land, and to what extent public benefit should be obtained at the expense of individual property owners. These questions are central because they bear on the ability of municipalities to achieve their planning objectives.

15.2 Three separate matters are involved. One is the question of compensation for loss of the right to the full use of land which remains in private ownership. Another is the question of compensation for land that is to be conveyed to public bodies for public purposes. Third is the issue of betterment — the right or ability of the community to recapture, from private owners, the increase in land value resulting from public actions, such as the imposition of land use controls or the provision of public works. We deal with each of these questions in this chapter.

15.3 We have looked at the compensation and betterment questions only as they affect the present working of the municipal planning system. We have not considered whether the present theory of compensation and betterment is necessarily appropriate, but have proceeded on the premise that the present arrangements concerning compensation for private property rights should not be drastically altered. An intensive examination of compensation and betterment was not within our terms of reference.

Existing situation

15.4 Simply stated, the present legal position with regard to compensation is that it is not necessary to compensate property owners for damage from injurious affection caused by the imposition of those planning controls and regulations that are clearly authorized by provincial legislation. Actions such as zoning and rezoning, granting or withholding subdivision approval, can in effect result in some properties gaining value and others losing value. Municipalities cannot take planning actions intended to achieve a particular public benefit without liability for compensation, if these actions involve the acquisition of private property. Limited judicial remedies may be available to owners who consider that a municipal planning action has had the effect of confiscating the value of their land. In appropriate circumstances, such owners can also seek redress of their grievances by turning to the Ontario Municipal Board.

15.5 The present position on compensation usually does not seriously impair the ability of municipalities to achieve their planning objectives. Where a municipality has not acted in a discriminatory manner or in bad faith it can downzone land without paying compensation. It is also possible to place land in a

holding by-law so that only limited changes in use are permitted until the municipality has decided what the new use should be, or until the impact of any given new use has been determined, or until services have been provided or certain other things have taken place. We have made specific proposals, in Chapter 11, to improve the operation of holding by-laws and interim controls. We do not think it is necessary or appropriate to provide compensation for loss of value in such cases.

Acquisition of development rights

15.6 The arrangements concerning compensation are not always adequate for municipal planning purposes, and in certain situations it would be beneficial if municipalities were able to engage in the selective purchase of development rights. We discuss later two specific kinds of property for which this procedure could be useful, land with unique environmental characteristics, and properties of historic or architectural significance.

15.7 It has been suggested to us that instead of having development rights acquired in a selective fashion, there should be public acquisition of all development rights on a universal basis. However we are not able to recommend the universal acquisition of development rights. Even if such an approach could be justified, on the ground that it provides the only effective way to achieve municipal or provincial planning objectives, we do not think it should be contemplated under present circumstances. Such a program would undoubtedly be extremely costly, and would of necessity involve a very substantial alteration or distortion of public spending priorities. We have not, under our terms of reference, examined the implications of universal public ownership of development rights. We believe however that the funds needed for selective purchase of development rights would not be significantly out of line with present government land programs. We have also concluded that a selective program, such as we outline below, could be of considerable assistance to municipalities in achieving their planning goals.

15.8 There are two situations in which municipalities should be able to acquire development rights. One concerns properties for which no public use is contemplated, but where it is in the public interest to prevent permanent development. It is now possible to keep out of development, without compensation, certain kinds of properties on which it is hazardous to erect buildings, such as valleylands or lands with unstable soil conditions. It is difficult, though, for municipalities to keep other properties with unique environmental characteristics in a natural state, where it is in the public interest to do so, without purchasing the property or paying for a claimed loss in value. Some typical examples of such properties would be rare woodlots, unique plant or animal habitats and important water recharge areas.

15.9 The other problem situation concerns buildings of historic or architectural significance. These can now be designated as such and can be kept from exterior alteration or demolition for a period of nine months. If the municipality has not succeeded in making satisfactory continuing arrangements during this period, it must, as a practical measure, either buy the property or allow the owner to demolish it. If the owner chooses, he may keep the building vacant or unused. These limitations can impair the usefulness of historic designation.

15.10 The public ability to deal with these two kinds of situations could be enhanced without exorbitant cost by allowing municipalities to purchase, not the property itself, but simply the rights to its potential development. There is already a precedent for this, albeit cumbersome, in *The Ontario Heritage Act,* which provides that a municipality may buy a designated property and sell it under certain terms and conditions negotiated with the new purchaser. In this roundabout way the municipality may, if it wishes, acquire the ownership of a property and then dispose of it in a manner that ensures that the rights to its further development remain with the municipality. We believe a more straightforward approach is practical, and could be taken to environmentally significant properties as well.

15.11 We propose that the Act be revised to authorize municipalities to purchase development rights of particular classes of property according to procedures set out in regulations. The classes to be identified in the first instance would be properties with unique architectural, historic or natural environmental significance. If other kinds of property are identified for this purpose in the future they could be provided for by a change in the regulations. We do not recommend that municipalities be required to purchase development rights for all such properties, because acquisition may not always be appropriate. Municipalities should be able to choose, in specific instances, between buying historic or architecturally significant buildings, buying their development rights only, or allowing their demolition. They should have a similar choice between buying the development rights or allowing development of properties with natural environmental significance.

15.12 Municipalities now have authority to designate properties of historic or architectural significance. They should also have the authority to designate properties that have natural environmental significance, and to acquire the development rights for all of these kinds of properties. This power should be given to all municipalities which have adopted a planning statement setting out the policy objectives, criteria and specifications that will be used to designate particular properties and to acquire their development rights. This is a power which should be available to all municipalities generally, including both upper-tier and lower-tier municipalities in a two-tier government structure. It is likely that, in practice, the responsibility for architectural and historic buildings will rest with local municipalities, and for unique environmental sites with the regional municipality, but this need not necessarily be the case. We see no reason to restrict the authority in either direction. Since lower-tier policies would be subject to regional review in any case, there should be little reason to expect unnecessary duplication or conflict in the respective programs.

Agricultural land

15.13 We have received submissions requesting that farm land be treated the same as environmentally significant land; in other words, that it is in the public interest to retain farm land in farm use, and the farmer should therefore be compensated for the loss of his development rights. We do not think it is a correct analogy. Zoning of farm land for farm uses is a normal exercise of a municipality's planning authority. The owner is not being deprived of his right to continuation of the existing use, but only of his ability to sell the land at a price commensurate with a different use — rural residential or

estate residential perhaps. Essentially, his position is not different from that of a homeowner who cannot sell his property for apartment development because it has been zoned for its existing single-family use.

15.14 There are a number of problems related to farm land. These include the fact that continued farm use may not be economic in all circumstances; that severance of portions of the farm may be needed to obtain sufficient funds to maintain farming operations; and that the farmer's rights to future development of the farm represent his retirement assets. These are serious arguments, but are not necessarily unique to farm land; they can also be applied, in some measure, to commercial, industrial and perhaps even residential property. It is a basic premise of the planning system that the right to develop land for a particular use is constrained by the community's interest in how land should be used.

15.15 We discussed earlier the question of the basic provincial interest in the preservation of farm land. We note also that the farm land problem is in the final analysis a problem of the farm economy. It is a serious problem, but its solution does not rest with the planning system. We believe it would be inappropriate to attempt to compensate for the inadequacies and vagaries of the farm economy through land planning measures that allow farm land to be developed for non-farm purposes as a matter of right, or that alternatively require the development right to be purchased by the community.

Land for public purposes

15.16 Municipalities are now able to identify in their plans, the lands which will be required for public use: school sites, roadways, public parks, works installations and other municipal facilities. The arrangements for securing these properties vary. Some sites are obtained through the subdivision approval process, either through dedication without cost or conveyance at agreed prices. In other cases, properties are acquired through negotiation or expropriation. Two main problems require attention. The first is the ability of the municipality or other public agency to reserve the specified lands for future acquisition. The other is the determination of the price at which land will be conveyed for public purposes.

15.17 Privately owned land may not be zoned exclusively for a public use, but under certain circumstances can be reserved on a limited basis for future public acquisition. It is the Municipal Board's general policy, for instance, to approve the zoning of school sites on subdivision plans where there is an implicit understanding that the sites will be acquired in a reasonable period of time. Municipalities may also reserve land for future road widenings through deferred widening by-laws which inhibit development on the designated lands for a 10-year period.

15.18 It is important that municipalities should be able to reserve land for public use in ways which give them adequate time to secure funds for the transaction, but which also provide adequate security and ensure equitable treatment to private owners. The present provisions for dedication of public parks and roadways through subdivision approval conditions are satisfactory, but the

Municipal Board's general policy with respect to school sites should be formalized and made more generally applicable. We propose that the Act be amended to give municipalities the explicit power to zone properly identified private lands for public purposes for a limited period of time. This power should be conditional on the adoption of a suitable planning statement outlining the criteria and standards to be used in identifying sites for various kinds of public use, and the future acquisition programs for these sites.

15.19 We think a period of three years would be appropriate for this kind of temporary zoning. This would give the municipality or other public agency time to arrange its acquisition program, and should not cause undue damage to the owner. The zoning for the property should provide an alternative private use that would automatically come into force at the end of the three-year period, or earlier if the municipality decides not to acquire the property. It should be required that both the proposed public use and the permitted alternative private use be publicly posted on the property, so that persons moving into the area while the land is still vacant have adequate notice of the site's future status.

15.20 School boards operating on the basis of 5-year capital budgets may find it difficult to secure site acquisition funds within a 3-year period. Although this could be a serious problem, it would be an unfair burden to require owners to hold lands in abeyance longer than this. Under our proposal, it may be necessary to rearrange provincial transfer payment policies so that school boards can act to acquire sites within a 3-year period.

15.21 Conversely, we do not think it is necessary to allow owners to requisition the purchase of the designated sites any time within the 3-year period. We do not find that enforced purchase would be equitable, and do not think that three years is too long a period for the owner of the land to have to wait.

15.22 We have found that there is little consistency in the prevailing practices for determining the price of land to be conveyed for public purposes through subdivisions. We believe that in the interest of equity the practices should be uniform, and we think the principle to be employed is straightforward. Land that is to be used for public benefit should not have to reflect development value which has resulted from the public action of approving the land for development. We propose that the Act stipulate explicitly that the price of land to be conveyed for public purposes by way of a zoning agreement is to be based on its value immediately prior to the date the zoning by-law was adopted, and that land to be conveyed for public purposes by way of a subdivision plan is to be priced at its value immediately prior to the date of draft approval. It is important that the principle be embodied in statutory form in the legislation, rather than left to the vagaries of negotiation, as is now the case where expropriation proceedings are not taken.

15.23 There is the related question of determining the basis for payments to be made in lieu of the park dedication in subdivision plans. Practices are not uniform in this regard, but should be. It has been suggested to us that for

consistency, the same principle for conveyance should obtain for cash-in-lieu — i.e. cash payments in lieu of park dedication should be based on 5% of the value of the subdivision lands immediately prior to the date of draft approval. The argument may have a superficial logic, but we believe it is incorrect.

15.24 The principle we have enunciated for the conveyance of public lands leads to a different conclusion. If the subdivider from whom cash is obtained had been required instead to convey a park site at its pre-approval value, this site could not have been sold for private use at its post-approval value. The increased value on this site as a result of subdivision approval should go to the community whose "park site" has, in effect, been developed.

15.25 We have therefore concluded that cash-in-lieu payments should be based on the value of the subdivision lands following their approval for development purposes. To ensure that all parties receive equal treatment, the principle should be embodied in the legislation, rather than left to negotiation as at present. We propose that the Act provide that where a municipality is securing cash payments in lieu of park dedication, the payments are to be based on the value of the subdivision lands immediately after the date of draft plan approval.

Betterment

15.26 The final topic concerns the question of betterment. We have been urged to find ways by which the public can secure the benefit of increases in land value arising from the approval of development, or from the provision of public facilities and services to support development. As we stated earlier, our review has not been directed to the general theory of compensation and betterment, but deals with these matters only in the narrow sense of their immediate relation to municipal planning. We have not examined the question of instituting a comprehensive system of compensation and betterment, but have looked at betterment only as it relates to the process of development approval.

15.27 It has been urged on us that a system of universal development permits be instituted as a means of recapturing betterment. It is argued that the financial contributions which can now be secured as a condition of zoning approval or subdivision approval constitute in effect a form of betterment payment. A universal development permit system, it is suggested, would enable the municipality to impose such levies on all new development, not simply development in new subdivisions or following rezoning, and would thus broaden the base for securing betterment.

15.28 We have already stated our conclusion that it is not advisable to replace the present zoning system with a universal development permit system. Our basic conclusion concerning betterment is that the recapture of betterment is primarily a question of taxation policy rather than of development regulation. It may perhaps be inequitable that certain kinds of betterment charges (e.g. road widening and park dedications) are already provided for by the development control process while others are missed out, but this is on balance preferable to using development regulation as a means of collecting taxes.

16 planning in northern ontario

Existing situation

16.1 Most of the people in northern Ontario live in organized municipalities in which the conventional planning mechanisms are used — official plans, zoning by-laws and subdivision plans. However, there are a number of unincorporated settlement areas outside the municipalities which also require some kind of planning controls. Some of these settlements are at the fringes of urban municipalities, and are under development pressure as a result of the high urban service costs and taxation levels in the adjacent municipalities. There are also a number of remote settlement areas which are undergoing pressures for urbanization because of nearby resource employment opportunities. In many of these areas, the existing settlement pattern and the pressure for new development has created a need for some kind of urban services and community facilities.

16.2 Three kinds of controls are now exercised on development in these settlement areas: 1) Permits, issued by the District Land Officer of the Ministry of Natural Resources under Section 17 of *The Public Lands Act,* are required for buildings on Crown lands, which comprise the predominant land holding in the unorganized north. 2) Zoning restrictions, established through Minister's orders under Section 32 of *The Planning Act,* are generally imposed as a land use freeze in areas where scattered development is taking place on privately owned lands. 3) Separation consents, which until now have been granted directly by the Housing Minister, provide control over private land transactions. A recent amendment to *The Planning Act* permits consent authority to be delegated to planning boards, where planning areas have been established (mainly in the fringe areas of some urban municipalities). The Minister can also designate specific areas in which consents may be granted by elected district land division committees.

16.3 These different controls operate with varying effectiveness. The Section 17 development permits were designed originally to control development on Crown lands in resource areas, in furtherance of the Ministry of Natural Resources land use program. However, because this permit system is also being used as a means of implementing the planning and settlement policies of the Housing and Treasury ministries, its use as an instrument for Natural Resources' own resource programs is discredited. There are also serious problems with enforcement and other aspects of the Section 17 orders, as noted below.

16.4 Minister's zoning orders under Section 32 of *The Planning Act* are also ill suited to carry out planning policies. These orders provide a useful way to freeze development in situations which require drastic treatment, but they are inflexible in operation and are difficult to modify where particular local circumstances warrant. Unlike the Section 17 permits, they have the added

disability of being administered from the Ministry offices in Toronto (since this responsibility cannot be delegated by the Minister), with the attendant problems of communication and remoteness. The administration of separation consents has until now presented the same problem of remote central administration from Toronto. However, it is hoped that delegation of consent approvals to planning boards and district land division committees will help to improve this situation in time.

16.5 The main problems can be summarized briefly. One is the considerable confusion and misunderstanding which arises from the use of two different control tools — Section 17 permits and Section 32 zoning orders — operated by different ministries, but both directed to controlling development in the unincorporated settlement areas. Another serious problem is the lack of local involvement in the administration of the development controls, although this may be improved to some extent by the prospective delegation of consent approvals. And finally, there is the serious problem that development control is exercised almost entirely without any real planning base. The decisions to grant Section 17 permits or consents are of necessity made individually on an ad hoc basis; no ready mechanism is available to establish the general location in which settlement should occur, the kind of development that should take place, or the standards that should apply in the given local circumstances.

Needed reforms

16.6 The planning needs in unincorporated settlements are relatively straightforward. It is necessary, first, to distinguish between the control of development in permanent settlement areas (whether on private lands or on leased Crown lands), and the control of settlement in Crown land resource areas which is unrelated to resource development (including vacation or retirement homes, or housing for workers commuting to jobs in other places). Suitable development control instruments and planning frameworks should be provided for these two different kinds of settlement. In the permanent settlement areas, determination of the planning framework and administration of the development control instruments should ultimately come under local administration.

16.7 Our proposal calls for a series of steps to be taken over a period of time. First there should be the formal designation of "permanent settlement areas" by the Ministers of Housing, Natural Resources, and the Treasury. These areas should be delineated by the local field representatives of these ministries, in consultation with the existing residents. To do this, it will be necessary to establish definitively which of the existing settlements are undergoing significant urbanization pressures or require the provision of some kind of urban service structure, and to determine the approximate geographic extent of the surrounding area which should be brought under planning control.*

*Among the places that we have been advised should be considered for designation as permanent settlement areas are Minaki, Nestor Falls, Upsala, Armstrong, Wabigoon, Dinorwic and Dyment, Foleyet and Gogama. The process of designation should obviously also involve the Ministry of Northern Affairs when established.

16.8 Minister's zoning orders (Section 32 of *The Planning Act*) should then be extended to cover all of the designated permanent settlement areas on both private and Crown lands. At the same time, a Section 17 order (under *The Public Lands Act*) should be extended to cover the remaining unorganized lands. There would thus be immediate control over development throughout the north. The Housing Ministry would be exercising planning control in the urban and potential urban areas, which would be separated from the basic resource areas where control would be left to the Ministry of Natural Resources.

Resource areas

16.9 Development control in the resource areas should continue to be exercised by the District Land Officers through the issuance of Section 17 permits. These permits should be administered within the planning framework provided by M.N.R.'s strategic land use plans, which are oriented to the Ministry's resource responsibilities. However, adequate control of development in these areas requires strengthening of Section 17. There should be a clearer definition of the specific improvements for which permits are required. Provision should be made for the removal of unauthorized works, for more substantial penalties against contravention of the Act, and for access to private property for inspection purposes. An appeal procedure should be provided against the refusal to grant a permit. In addition, it should be a requirement that a Section 17 permit be issued prior to the granting of other kinds of approvals or permits, such as access, hydro and septic tank.

Permanent settlement areas

16.10 In the permanent settlement areas under Housing Ministry control, different procedures and instruments are necessary. Three things are needed: 1) A procedure for creating suitable planning guidelines as a basis for regulating development. 2) A suitable urban control instrument, other than Section 17 permits, so that the Section 32 land use freeze can be lifted in accordance with the established planning framework. 3) Mandatory local involvement in the creation of the planning framework and the administration of the development control process.

16.11 Local participation in settlement area planning should ultimately take place through elected Planning Committees, equivalent to the District Land Division Committees provided for in the recent amendment of the Act. However, as we note below, the planning committees should be responsible for broader planning functions than simply granting consents, as the Act now provides. As it may not be practical to have elected committees in the initial stages, at least not in all designated settlement areas, the Act should require the Minister to establish, in each settlement area, an appointed Planning Advisory Committee consisting of local residents. These appointed advisory committees should be temporary, until elected planning committees can be put into place.

16.12 The initial responsibility of the elected planning committee or appointed advisory committee would be to prepare a relatively simple set of local planning guidelines, the scope of which should be established by regulation. The guidelines should delineate the geographic area within which expansion of the settlement will take place, outline the general land uses to be permitted, and establish minimum development standards in accordance with local conditions. Provincial field officials from the various ministries should participate

in the preparation of the planning guidelines, but their adoption should rest with the local committee. It should be mandatory for the guidelines to be adopted within a specified period after the establishment of the committee (perhaps 18 months). The guidelines should receive the Minister's approval before coming into effect.

16.13 On approval of the planning guidelines in a designated settlement area, the Minister should be required to remove the zoning order from that area and replace it with a new instrument, a "Development Control Order". This order would be analagous to the strengthened Section 17 order described earlier for control in resource areas. The order would authorize the local planning committee to grant "development control permits", similar to Section 17 permits, which would have to be issued prior to granting other permissions required for development (i.e. access, hydro, septic tank). The Act should require that in issuing development permits, the planning committee must have regard for the policies in the approved planning guidelines. There should also be provision for appeal of the committee's decisions to the Ontario Municipal Board on the same basis as other appeals under the Act. The Minister should specify by regulation the agencies or parties to be consulted by the local planning committee in dealing with a permit application. The Minister should be authorized to remove the power to grant permits from any committee, and to revoke the Development Control Order and re-impose a Section 32 zoning order if he should find this necessary. In each case, the Minister should be required to state his reasons for taking such action.

Consents

16.14 In addition to preparing the local planning guidelines and issuing development permits, the planning committee should ultimately have the responsibility for granting consents. Our proposal is that at the latest, when the guidelines have been adopted, there should be an election of local planning committees to replace the appointed advisory committees. In those settlement areas where district land division committees have already been elected, the Act should provide for these committees to become local planning committees, with responsibility thereafter for administering the planning guidelines and development permits. The Act should require the committees to have regard for the adopted planning guidelines in dealing with consent applications.

Fringe development areas

16.15 The proposed procedures would apply to the permanent settlement areas located outside the influence of the larger urban municipalities in the north. There are also development pressures in unorganized fringe areas surrounding urban municipalities, some of which are under the jurisdiction of joint or independent planning boards. The use of planning boards may serve to produce an adequate planning framework in some cases, but does not resolve the basic problems described above, of applying Section 17 and Section 32 in unorganized areas of urban settlement. There should be a planning and development control mechanism in these fringe areas similar to that proposed for the remote permanent settlement areas.

16.16 The Act should provide for local planning guidelines to be established in fringe settlement areas, for a development control order to be imposed by the Minister, and for development permits to be issued in accordance with

the guidelines. Where there already are joint planning boards, it may not be feasible to prescribe the appointment of planning advisory committees or the election of planning committees at the outset. We propose therefore that the Act be amended to allow the Minister to establish the system of planning guidelines, development control orders and development permits to be applied by regulation in designated fringe settlement areas. The initial delineation of fringe settlement areas should be made by the ministry, in consultation with the existing planning boards and local councils, as well as the residents of the particular area.

16.17 Existing joint planning areas which comprise incorporated municipalities and fringe settlement areas can provide a useful way to secure coordination of planning policies and should continue to be permitted on a voluntary basis. It is important though that adequate planning mechanisms be established in each fringe settlement area so that the administration of planning controls can be carried out on a local basis, by the local residents.

Long-term objectives

16.18 Our proposals are concerned with establishing a reasonable kind of development control system in unorganized settlement areas. They do not get at some of the basic underlying issues which affect development in northern Ontario, such as erratic local economies, land tenure problems and the costs of the existing random settlement pattern. They also do not touch on basic structural questions of local government organization in the north, or the problems and costs associated with urban servicing and development standards. These issues are beyond this committee's terms of reference. We urge strongly that the ministries and agencies concerned undertake an immediate review of planning, development and servicing standards that would be appropriate for the great variety of physical, social and economic circumstances in the unorganized north. We also suggest that the government pursue as a long-term objective the establishment of a suitable government structure in the permanent settlement areas, with indigenous determination of local planning policies and administration of the conventional instruments under *The Planning Act* (municipal plans, zoning by-laws and subdivision plans). We see our proposal for a development permit system as an interim means of bringing local resources into the administration of basic planning controls, as a transition to local planning in a conventional local government framework.

17 other provincial legislation

17.1 Our review has been directed primarily to *The Planning Act,* but we have also examined other provincial legislation that has a direct bearing on the operation of municipal planning. The particular provincial Acts that we found especially relevant are the regional government Acts, *The Planning and Development Act, The Environmental Assessment Act, The Pits and Quarries Control Act, The Ontario Heritage Act* and *The Ontario Energy Board Act.* We have proposed, in Chapter 7, that the provision for county road zoning be deleted from *The Public Transportation and Highway Improvement Act,* and proposed changes in *The Public Lands Act* have been dealt with the Chapter 15. *The Municipal Act* and a number of other provincial Acts can affect the ability of municipalities to achieve their planning objectives. However, the other legislation deals mainly with the organization and structure of municipal government or the operation of municipal programs and thus lies outside terms of reference of this review, which is concerned with other legislation as it affects municipal planning directly. Because we were concerned with municipal planning legislation as it applies generally throughout the Province, we also excluded from our reivew the great number of private municipal bills that may deal with planning operations of one sort or another in particular municipalities.

Regional government Acts

17.2 Our main conclusion concerning the different regional government Acts is discussed in Chapter 8. It is that *The Planning Act* should contain planning provisions that are common to all of the upper-tier municipalities, while individual variations in the structure and organization of the regional and local planning function should be dealt with in the individual regional government Acts.*

17.3 The present variations in planning structure in the different regions are outlined in Appendix C. These are now set out in the individual Acts. We have proposed, in Chapter 8, that each regional council should be required to determine which of the local municipalities will be assigned the authority to approve subdivision plans and grant consents.** This assignment should take place by amendment of the particular regional Act in each case. If a regional council should decide that there should be other changes in the distribution of planning responsibilities or in the scope of regional planning in that region, these changes should be secured through amendment of the particular Act in question. We propose that this be done

*The term regional government is used here to apply to the 13 restructured upper-tier municipalities that are listed in the footnote to Paragraph 8.1.

**There will be an exception for municipalities in Ottawa-Carleton and Metropolitan Toronto where consents are now granted by local committees of adjustment. We propose no change in this regard.

through amendment of the regional Act rather than by ministerial regulation, because we believe such changes should involve legislative policy rather than ministerial discretion.

Planning and Development Act

17.4 *The Planning and Development Act* and its related legislation *(The Parkway Belt Act* and *The Niagara Escarpment Act)* allow the government to impose a provincial development plan in any area designated for this purpose. When the provincial plan is in force, local municipalities affected are required to amend their official plans and zoning by-laws to bring them into conformity with the provincial plan. The Act spells out various procedures for the preparation and adoption of the development plan, including provisions for reports from appointed advisory committees, notification to affected parties, formal hearings by appointed Hearing Officers, consultation with municipalities, and the like.

17.5 At the present time, the development plan for the Parkway Belt West (extending from Hamilton to north of Toronto) has undergone the required statutory hearings, and the report of the Hearing Officers is now before the Provincial Treasurer, the Minister responsible for the Act. When his report is submitted to the Cabinet, it will be able to bring the plan into force. The plan for the Parkway Belt East (extending from north of Toronto to Oshawa) is under preparation, but it is understood that the work is currently in abeyance and the status of the plan is uncertain. The development plan for the Niagara Escarpment is also in preparation. A development control order has been established under *The Niagara Escarpment Act* which has the effect of suspending the provisions of local zoning by-laws in designated sections of the escarpment planning area; in these sections. development cannot take place without a development permit from the Niagara Escarpment Commission.

17.6 The provisions of *The Planning and Development Act* assume the continuation of statutory municipal official plans under *The Planning Act.* We have looked at the question of the application of *The Planning and Development Act* if our recommendation is accepted that statutory official plans be abolished. Under this proposal, as we have already discussed, any provision in a municipal plan or planning statement or in a municipal zoning by-law that is contrary to a stated provincial interest could be vetoed by the Minister. If a municipality fails to include in its plan any particular provision that the Province wants to have included, the matter would be heard by the Ontario Municipal Board and its recommendations would be submitted to the Cabinet for a decision.

17.7 If our proposed reforms are adopted the Province may not have the same pressing need to impose a plan of its own over a municipal plan in order to secure its own interests. The provisions in *The Planning and Development Act* seem to us to be geared to a concept of a hierarchy of statutory plans in which the provincial interest is most effectively expressed through its own supervening plan. We think this arrangement may no longer be needed if the municipal plan itself ceases to be a rigidly "legal" type of instrument.

We note also that insofar as municipal zoning is concerned, the Minister already has the ability to impose through Section 32 orders any particular zoning provisions that the Province finds necessary.

17.8 We do not in any way question the government's right to impose its own planning policies within a municipality. The Legislature has determined through *The Planning and Development Act* that the government may do this, and through complementary legislation, where it may do this (i.e., Niagara Escarpment and Parkway Belt). Our view is that the proposed reform of *The Planning Act,* which will allow provincial intervention into municipal planning in matters of direct provincial concern, could serve to meet the Province's needs in a less intricate and more direct fashion. We assume that the question of modifying *The Planning and Development Act* cannot be dealt with in any conclusive way until a decision has been made on our proposed reforms. However, we think it would be useful for the government to examine the feasibility of dealing with the Parkway Belt East directly through the new Durham Regional Plan, rather than through a formal provincial plan under *The Parkway Belt Act*. We are certain, everything being equal, that it would be better to have only one instrument of planning control in a given area rather than two, one superimposed on the other.

Legislation concerning pits and quarries

17.9 The power to license pits and quarries rests with the Minister of Natural Resources under *The Pits and Quarries Control Act.* Municipal authority over pits and quarries is provided under both *The Planning Act* and *The Municipal Act.* While *The Planning Act* does not recognize pits and quarries as a "use" of land that is subject to zoning, municipalities are authorized under the Act to pass by-laws prohibiting the establishment of new pits and quarries. Under *The Municipal Act,* they are allowed to prohibit the operation of pits and quarries in areas that were designated for residential or commercial purposes in zoning by-laws or official plans prior to 1959. They can also prohibit the enlargement of any pits and quarries, established prior to 1959, beyond the limits in use at that date. *The Municipal Act* also allows municipalities to regulate the operation of pits and quarries established both before and after 1959; in particular they can impose stringent grading requirements on any pits and quarries that are within 300 feet of a road and have not been in operation at least once in a 12-month period.

17.10 Pits and quarries represent a very contentious issue. Most of the parties involved in or affected by their operation are dissatisfied with the present legislative arrangements governing the establishment, operation and regulation of pits and quarries. From the provincial standpoint, a critical issue is the long-term need for mineral aggregates for building and road construction purposes. This requires that an adequate supply of aggregate deposits be reserved for future mining within a reasonable distance of the present and future markets. As noted, municipalities have the power to prohibit new pits and quarries, and can zone the surface land over aggregate deposits so that it can be developed for other purposes. This effectively prevents the deposits from being mined in the future, and can thus interfere with the future supply of mineral aggregates. The problem from the producers

standpoint arises from the same consideration; that is, they can be prevented by municipalities from establishing new pits and quarries, or, in many cases, from enlarging their present operations.

17.11 For municipalities with large gravel deposits, and their residents, the problem is the opposite. The operation of pits and quarries creates noise and dust hazards, they are unsightly, and they generate large volumes of truck traffic which interferes seriously with local amenities. The problem is most acute in those rural townships that have substantial residential development and also have large gravel operations within trucking distance of major urban centres. Their expressed need is for better ways to restrict existing gravel operations, and to remove the pressure for opening up new mining operations in settled rural areas.

17.12 A provincial committee studying the question has recently issued a report proposing major changes in the present arrangements concerning pits and quarries.* The main proposals affecting municipalities are the adoption of a new Aggregate Resource Management Act to replace *The Pits and Quarries Control Act,* and changes in the provisions of *The Planning Act* and *The Municipal* Act relating to pits and quarries.

17.13 The Working Party's proposal calls for the allocation of a fair share of potential aggregate supplies to all areas having substantial deposits, through the designation of long-term mineral aggregate extraction areas in county and regional official plans. The counties and regions with such designated areas and with suitable supporting policies would be given the power to licence pits and quarries within the designated areas, and local zoning powers would be removed from the designated areas. The proposal would in essence shift municipal control over pits and quarries from the local level to the regional or county level, and would assign much of the provincial authority to qualifying counties and regions (i.e. with suitable official plans and adequate administrative resources). The report also contains a number of specific proposals concerning various aspects of the regulatory process, including an extensive hearing and appeal mechanism, with the ultimate power resting with the Minister of Natural Resources, as at present.

17.14 The Working Party's report is now being considered by municipalities and municipal organizations, public groups, and industry organizations. It is not known whether the proposals will be accepted by the government, or to what extent the specific recommendations will be enacted in legislation.

17.15 Generally speaking, the proposals in the Working Party report would be consistent with the approach we are taking. We see the question of aggregate resources as being analagous to agricultural land. We accept that the govern-

*Ontario Mineral Aggregate Working Party, *A Policy for Mineral Aggregate Resource Management in Ontario,* 1976. The Working Party consisted of provincial officials, municipal and public representatives, and industry representatives.

ment should be able, where it decides it is in the provincial interest to do so, to ensure that substantial land areas are kept free of buildings and development (whether to maintain agricultural production or to reserve the land for future aggregate extraction). We have also taken the position that the provincial interest in such matters as agricultural land and aggregate supplies can most effectively be secured by assigning the authority to upper-tier governments exercising area-wide responsibilities.

17.16 At the same time however, the proposal to remove all local zoning powers from designated extraction areas could present problems. These areas will presumably be intended to meet long-term potential needs, and it is not certain that all of the lands would eventually become the site of gravel operations, or at what point in time. We see nothing wrong with allowing these areas to remain under local zoning control, on the assumption that the Province and the county or region will have the right to veto (or object to) any specific zoning decisions that would preempt the possibility of extracting the gravel. Our basic position has been that land use control should remain at the local level, as long as it is not exercised in a way that impairs either provincial or regional/county interests. Local zoning authority should be important as well in establishing the sequential uses to which sites will be put, including the ultimate uses following their rehabilitation at the cessation of extraction activities.

17.17 Another possible problem area concerns the Working Party's proposal to define the making of a pit or quarry as a "use" of land. Since zoning by-laws cannot be applied retroactively, this proposal could lead to the possibility of existing pits or quarries acquiring the status of legal non-conforming uses that they do not now have under the relevant provisions of *The Municipal Act*. This would not necessarily be in the interests of the local community concerned.

17.18 We have not undertaken to review the Working Party Report with respect to its suitability in terms of provincial policies concerning mineral aggregates, as that is not within our terms of reference. Our interest has been to determine whether the Working Party proposals would fit in generally with the changes we are proposing in the municipal planning system. Our conclusion is that they are generally consistent, and we simply note that if the Working Party proposals are adopted, the possible problems we have identified will have to be worked out.

17.19 An issue that will remain open if the Working Party proposals are not accepted, and will remain open in limited situations even if the proposals are acted on, concerns the right of pit owners to make themselves immune from municipal grading requirements by having gravel removed from the pit at least once in each 12-month period. We have been told that this allows obsolete pits and quarries to be kept in an unsightly or even unsafe state for an indefinite period, by having a nominal amount of gravel removed once a year. It has been suggested that the appropriate minimum operating period to render a pit immune from grading requirements should be 30 days in each 12 month period. We have also been told however, that the present

provision in the legislation is necessary to protect the right to future extraction activities in pits and cannot be operated economically on a full-time basis at this time. This problem deserves further study.

Environmental Assessment Act

17.20 *The Environmental Assessment Act* establishes a process by which the environmental impact of various classes of public and private undertakings is to be determined prior to their being allowed to proceed. An environmental assessment, under the Act, is required to demonstrate the environmental advantages and disadvantages of proceeding with an undertaking as proposed, of proceeding in other ways with the undertaking, and of proceeding with alternatives to the proposed undertaking. Undertakings are defined in the Act as consisting of projects, enterprises, activities, plans or programs. Environment is defined very broadly to include not only the natural and physical environment, but also human and animal life, social, economic and cultural factors, and the interrelationships among all these elements.

17.21 The Act establishes procedures for proponents of undertakings covered by the Act to submit environmental assessment reports to the Environment Ministry, for hearings where necessary by an independent Environmental Assessment Board, and for final approvals of undertakings by the Board, the Environment Minister or the Cabinet, depending on the circumstances. Undertakings of all provincial ministries and agencies and of municipalities, and major business and commercial enterprises, will come under the Act as it is phased in. Specific undertakings or classes of undertakings are being designated or exempted from environmental assessment by regulations established by the Environment Minister.

17.22 We have reviewed the relationship between *The Environmental Assessment Act* and *The Planning Act* and the relationship of the former Act to the municipal planning system. We have both general concerns about the scope of *The Environmental Assessment Act* and specific concerns about its possible effect in the operation of municipal planning. Our general concerns relate to the basic approach that the Act takes to the approval process and to the definition of environment in the Act.

17.23 *The Environmental Assessment Act* takes a significantly different approach to the approval process than does *The Planning Act* as we have proposed it be structured. The main question is that of burden of proof. Our view of the public role in planning approval, as outlined in Chapter 2, is that the burden of proof should be negative; generally, the burden should rest on the public authority to demonstrate that it is *not* in the public interest that a project or undertaking be allowed to proceed. The stance of *The Environmental Assessment Act* is essentially that the burden should rest on a proponent to demonstrate that it *is* in the public interest to proceed. It is beyond our own terms of reference to consider the decision to deal with provincial works and undertakings this way. We note however that this approach *The Environmental Assessment Act* contrasts significantly with our view as to the provincial role respecting municipal plans and municipal planning decisions on private development proposals.

17.24 We believe our proposal in Chapter 11 that holding by-laws be used to regulate development in environmentally significant areas can produce close to the desired results of *The Environmental Assessment Act* with respect to natural environment concerns. But we foresee considerable difficulties if two different kinds of assessment, environmental assessments and planning assessments, are operating concurrently within different philosophical frameworks. In Chapter 2 we stated that different Acts of legislation should be designed to produce coherent results, and we believe that the government and the Legislature will have to determine how to reconcile this basic philosophical gap between the two Acts, if our general proposals for *The Planning Act* are accepted.

17.25 Our other general concern is with the broad definition of "environment" in *The Environmental Assessment Act.* From our own experience and our review of municipal planning we believe that there can be serious problems in the assessment of social, economic and cultural impact as that Act now contemplates. Determination of socio-economic impact is a speculative process at best, and its relevance and validity are profoundly influenced by prevailing and often conflicting community values.

17.26 Our own view is expressed in our recommendations in Chapter 6. It is that municipal councils should be obliged to set their social and economic priorities, to have regard for the relevant social and economic considerations and to take account of the likely social and economic consequences of their planning actions and decisions. We foresee considerable difficulties in applying socio-economic impact analysis to municipal planning proposals and to "major business and commercial enterprises" coming under municipal planning approval. We are concerned essentially with the difficulties in establishing the probable social or economic impact of given planning decisions, and with the basis on which the forecast changes are determined to be desirable or undesirable.* We are also concerned whether the authority for determining that given economic or social changes should be allowed in a municipality should be assigned, in the final analysis, to the Environment Ministry, whose primary interest is matters of natural environment. Our view is that with respect to municipal undertakings, and private activities coming under municipal planning authority, the definition of environment in the Act

*An illustration of this problem can be found in preliminary criteria being considered for the environmental assessment of municipal projects. These include, among others: "Might the proposed undertaking. . .substantially change the social structure or demographic characteristics of the surrounding neighbourhood or community?" We note that using this approach could well have prevented the substantial changes in social and ethnic character that have taken place in many parts of various Ontario communities. We note also that municipal planning in most of the larger cities and many other communities in Ontario has been concerned with this question from a different standpoint — how to *accommodate* profound changes in the ethnic, social and economic character of the community, not whether the changes should be allowed to take place. We have stressed that the municipal planning system should not be allowed to operate in a way that will exclude different kinds of people from living in any given part of a community, and are concerned that the approval system not be designed to rule out municipal planning decisions that will facilitate social, economic and cultural changes in the community.

should be restricted to "natural environment". We think that this basis philosophic gap between *The Environmental Assessment Act* and our view of *The Planning Act* also requires the attention of the government and the Legislature.

17.27 In addition to these general concerns we have two specific concerns with *The Environmental Assessment Act* — its definition of municipal undertakings, and its jurisdiction over major business and commercial enterprises that come under municipal planning jurisdiction. We deal with these questions in turn.

17.28 As we have noted, "undertakings" to be covered by environmental assessment are defined in the Act to include projects, enterprises, activities, programs or plans. Work is now underway to identify the particular kinds of municipal activities that will be exempt from the environment assessment requirement. As the Act stands, it is possible that municipal plans *per se,* as distinct from the plans for particular public works, could be interpreted as coming under the Act. There is no indication that it is intended to bring municipal plans under the Act, but their status should be clarified.

17.29 We have proposed that municipal plans and planning policy statements be established as the basis for all municipal planning actions and planning decisions, and have proposed a comprehensive procedure for ensuring that public and provincial interests are protected in the adoption of municipal plans and planning policies. It would be inappropriate to require that the instruments in *The Planning Act* undergo another kind of provincial review under *The Environmental Assessment Act.* We think this should be established categorically in the basic legislation, rather than leaving it to be worked out in the development of the regulations defining municipal undertakings to be covered by the Act. We accordingly recommend that Section 1(o)(i) of *The Environmental Assessment Act* be amended to clarify that municipal plans other than those related to particular public works are specifically excluded from the jurisdiction of the Act. We believe that if this is not done the situation may become unworkable.

17.30 A major municipal concern regarding *The Environmental Assessment Act* is the provision that "major business and commercial enterprises", if designated by the regulations will be required to obtain environmental assessment approval before they can proceed. There is deep concern with the prospect of development proposals having to undergo duplicate sets of hearing procedures, one by the Ontario Municipal Board with respect to zoning or official plan designation under *The Planning Act,* the other by the Environmental Assessment Board with respect to assessment under *The Environmental Assessment Act.* The Environment Minister has stated that it is not expected that the two boards would be considering the same things, and also that zoning applications before the O.M.B. would not be proceeded with until the environmental assessment had been carried out. There is also concern at the prospect of two different approvals being required, one by the Housing Minister (or O.M.B.), one by the Environment Minister (or the Environmental Assessment Board), though both approvals might ultimately end up with the Cabinet under either Act.

17.31 This possible conflict and duplication is an urgent matter. While there is no doubt the government should be able to subject developments of truly major or provincial significance to the provincial environmental assessment procedure, it would be unfortunate to require a dual assessment of ordinary developments that are mainly of local, or at most regional significance. The environmental assessments called for in *The Environmental Assessment Act* are not significantly different, except in approach, from the normal planning assessments that municipalities must make under *The Planning Act.* We believe that the responsibility for planning assessment should remain with the municipalities, as a matter of principle, and that an over-riding provincial environmental assessment should take place only with respect to developments of truly provincial interest.

17.32 We make alternative proposals in this regard. The first is that *The Environmental Assessment Act* should be changed so that those private sector undertakings covered by the Act are determined by specifications contained within the Act itself, rather than left to be determined by subsequent regulations, as Section 1(o)(ii) now provides. This change would serve to separate out those private developments that are of provincial significance and which therefore require provincial environmental assessment, from those that are mainly of local and regional significance and should therefore be dealt with through normal municipal planning assessment. If this change were made, it would then be quite consistent to stipulate that provincial environmental assessment of private undertakings covered by the Act should take place first, and that municipalities would not be allowed to make their planning decision on a particular development until its environmental adequacy from a provincial standpoint had been determined.

17.33 If our first proposal is not accepted, the alternative proposal is that the environmental assessment should to the greatest extent feasible be merged with municipal planning assessment. This should be done by assigning the approval power over private undertakings to those municipalities that have adequate planning policies of their own concerning the natural environment, e.g. respecting environmentally hazardous and sensitive lands, water quality, air quality, etc. Since municipal planning policies are subject to provincial review and approval if official plans are retained, or provincial review and veto under the system we propose in this report, the government would have full power to ensure that the particular municipalities to which the environmental approval has been assigned have suitable policies for this purpose.

17.34 To effect this recommendation would require changes in both *The Environmental Assessment Act* and *The Planning Act.* The Environment Minister would have to have approval or veto powers over municipal environmental policy statements, and changes would be required respecting the role of the Environmental Assessment Board, at least with respect to the finalization or variation of the Board's decisions. It would also have to be clarified, in two-tier planning situations, whether environmental assessment authority would rest exclusively with the regional or county council having an approved environmental planning policy, or whether the responsibility could be allocated between the regional/county and local levels, depending on the kind or scale of private development involved.

17.35 Our recommendations are intended to ensure that there is a single approval system for private development coming under municipal planning responsibility. Our basic premises have been articulated throughout the report – that all of the relevant legislation be designed to operate in a coherent manner, that there be a clear identification of who is making the ultimate planning decisions and on what basis the decisions are made, and that the procedures employed be as straightforward and direct as possible. We believe the duplicate approval process for private development that is now contemplated by the two Acts will be, at the least, confusing, disruptive and costly, and may well prove unworkable. The best way to clarify the situation is to merge the two approval processes by assigning provincial environmental approval of private development as directly as possible as to municipal level.

The Ontario Heritage Act

17.36 Municipal councils can withhold demolition permits for designated buildings of architectural or historic significance for a period of 270 days, under the provisions of *The Ontario Heritage Act.* Municipalities also have a right under *The Planning Act* to withhold demolition permits for any residential buildings until the owner has secured a new building permit for the property. The question has been raised whether the demolition control provisions of *The Planning Act* should apply to designated historic buildings as well.

17.37 The two different kinds of controls are now being provided for two essentially different kinds of situations. The procedures for historic buildings are designed, at least in part, to give the municipality an opportunity to carry out negotiations with the owners so as to find a way of maintaining the building in an appropriate use while preserving its distinctive character. We have recommended specific changes that should assist municipalities for this purpose: improvements in the use of incentive zoning and holding by-laws, in Chapter 11, and provision for the acquisition of development rights, in Chapter 15.

17.38 Demolition control for residential structures is designed mainly to forestall the premature destruction of the residential housing stock. The provisions of the Act do not allow municipalities to prevent demolition indefinitely but only as long as the owner cannot make another legal use of the property. As soon as he is able to secure a building permit, a demolition permit must be granted.

17.39 The problem with historic or architecturally significant buildings is that in many cases the owner can, in fact, make another legal use of the property. If *The Planning Act* provisions were applied, municipalities would in many cases lose the valuable protection afforded by the 270-day provision of The Heritage Act, since demolition would be legally possible. We believe that on balance it is more important that municipalities have the assured benefit of the 270-day waiting period, plus the availability of special zoning provisions and development rights acquisition that we have proposed, than simply the security of being able to withhold a demolition permit until a building permit has been secured. We are therefore unable to recommend that the demolition control provisions of *The Planning Act* be applied to designated historic or architecturally significant buildings under *The Ontario Heritage Act.*

The Ontario Energy Board Act

17.40 Generally, the establishment of pipelines, other than those carrying petroleum, is authorized by the Ontario Energy Board. In a recent decision concerning the establishment of a gas line the Ontario Divisional Court held that intermunicipal transmission lines authorized by the Energy Board can be constructed notwithstanding any contrary provision in a municipal by-law. A provision of a township zoning by-law that attempt to regulate the location of transmission lines was held to be invalid.*

17.41 The location of pipelines can be a significant local planning factor, particularly in rural areas where the establishment of these lines on low-lying lands can interfere with the operation of drainage facilities. We have received submissions that the legal situation should be modified so as to allow municipalities to exercise planning control over the location of transmission lines within the jurisdiction of *The Ontario Energy Board Act.*

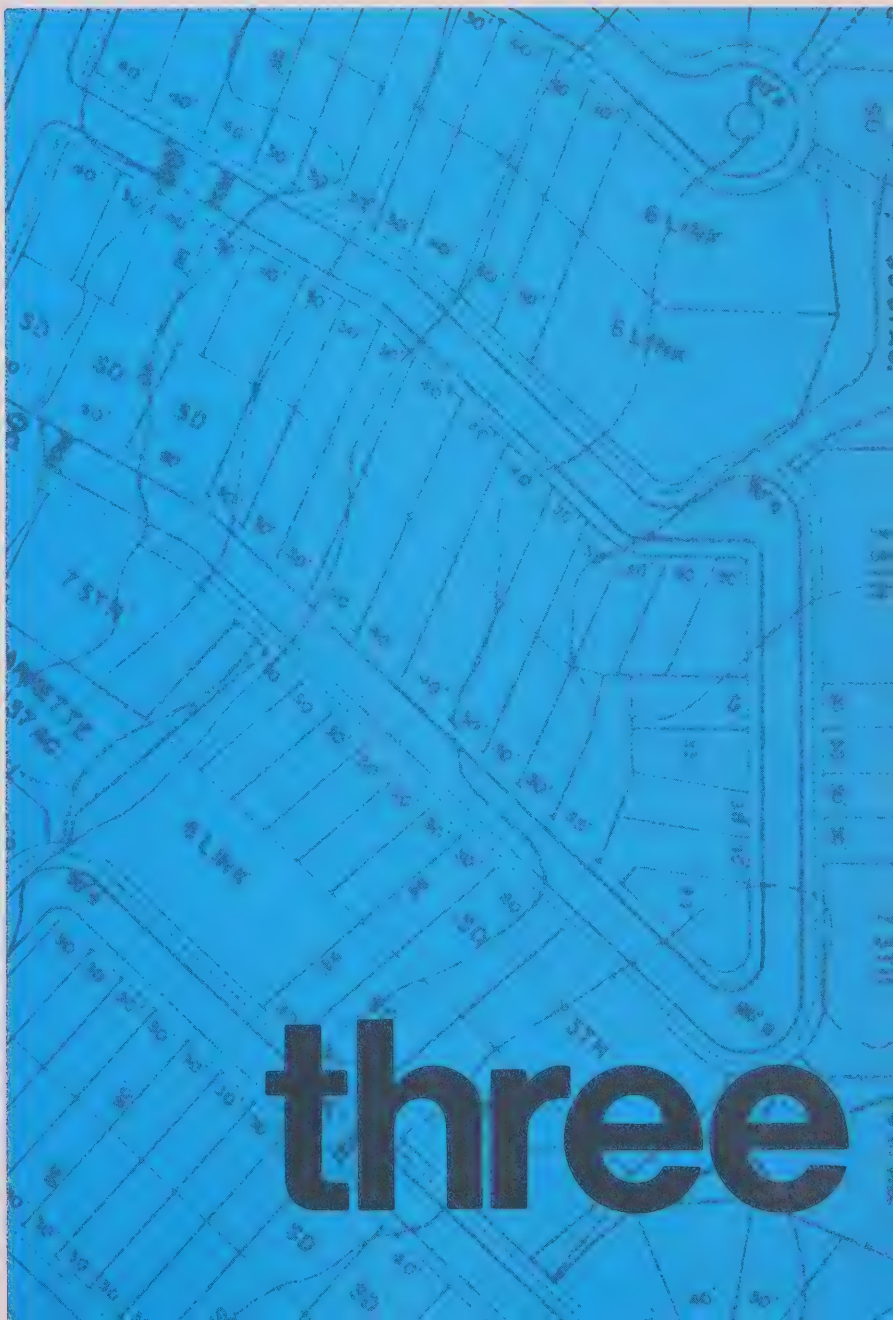
17.42 We are not able to conclude that local planning considerations should have priority over intermunicipal energy transmission considerations. The problem may to some extent be a matter of the practices that are followed. What is necessary is that there be suitable consultation with local municipalities concerning their planning needs when pipelines are to be established. It has been suggested to us that the Energy Board should be required to have regard for local planning policies in reaching a decision to authorize the establishment of a pipeline, but we think this would be too directive. Our recommendation is that *The Ontario Energy Board Act* be amended to require that in dealing with pipeline applications, the Ontario Energy Board be required to consult with every affected municipality concerning its planning requirements with respect to the proposed pipeline before making a decision on the application.

Ontario Hydro

17.43 In addition to pipelines that are established under *The Energy Board Act,* a similar kind of problem exists with respect to Ontario Hydro facilities. While Ontario Hydro is technically speaking not a crown corporation, it carries out the function of a crown corporation and should, in our opinion, be treated as such with respect to municipal planning. We proposed in Chapter 4 that provincial facilities which are location-specific, i.e. for which the actual location is important in carrying out the particular responsibility, should remain outside the scope of municipal planning control. We believe that this should apply to Ontario Hydro's facilities as well. Since Hydro installations are subject to environmental assessment approval under *The Environmental Assessment Act,* there is adequate opportunity to canvass how these facilities will relate to the municipality's planning program. We see no need to place any additional planning requirements on Ontario Hydro installation beyond those in effect for provincial undertakings generally.

*Union Gas Ltd. vs. The Corporation of the Township of Dawn (1977).

proposed improvements to the act



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proposed improvements to the act

This section contains the Committee's recommendations for improvements to *The Planning Act* that should be carried out whether or not the proposed major reforms are adopted. These have been selected from submissions concerning specific aspects of the Act, many of them of a technical or housekeeping nature. Other submissions relating to the general provisions of the Act have been dealt with as part of our consideration of major reforms in Part II of the report.

No.	*Section/Submission*	*Recommended Action*
1	**1(d).** Delete school boards from the definition of "local boards".	The submission should not be acted on. The effect of the amendment would be to eliminate the requirement that public works undertaken by school boards conform to the official plan. Their undertakings are important to municipal planning and should conform to the official plan.
2	**1(j).** Clarify the meaning of "other undertaking" in the definition of "public work".	This submission should be acted on. Under section 19(1), no public work may be undertaken for any purpose that does not conform with the official plan. Section 1(j) defines "public work" to be "any improvement of a structural nature or other undertaking that is within the jurisdiction of the council or local board." The meaning and significance of the words "or other undertaking" is not clear. Undertakings do not appear to be expressly limited to those of a structural nature. Only improvements or undertakings of a structural nature should be included in the definition of "public work" for the purpose of the Act.
3	**2(8).** Require the Minister to consult with the appropriate municipalities before dissolving or altering the boundaries of a planning area.	This submission should be acted on. As a matter of practice the Minister does consult before acting under this subsection. As a matter of principle he should be required to do so by the legislation.
4	**4, general.** Require that non-elected members of a planning board or committee have planning training (a community college or university course).	This submission should not be acted on. Council should be free to choose whoever it wishes to serve as members of planning board. See also Chapter 5.

5	**4, general.** Provide for agricultural representation on all planning bodies dealing with the removal of prime agricultural land from production.	This submission should not be acted on. See the preceding submission.
6	**4, general.** Require that a school board representative be appointed to the planning board to ensure school board's concerns are communicated fully to the board.	This submission should not be acted on. See preceding submission.
7	**4, general.** Require the keeping of minutes and records by planning boards.	The Act should be amended to require a planning board to keep minutes and records of its proceedings.
8	4(4). Provide for appointment of council members to planning board for the full two years of the council term.	Appointment of members of council to planning boards should be treated on the same basis in the legislation as appointment of members of council to committees of council. Therefore, sections 4(4) and (5) should be amended to delete the word "annually". There should be substituted in section 4(4) the provision that members of council may not be appointed for a term of office exceeding the term of the council that has appointed them. See also Chapter 5.
9	4(10). Provide a planning board with the alternative of appointing a secretary *and* a treasurer.	The Act should be amended to provide this flexibility.
10	7(1). Amend this section by including reference to local and regional councils which perform the duties of planning boards.	This submission should be acted on. The subsection provides that it is not an offence to disclose the information referred to in section 78 of *The Assessment Act* to a member or employee of a planning board who declares that such information is required in the course of his duties. Where there are no planning boards, as is the case with the regional municipalities, section 7(1) should permit employees and members of the particular council to obtain information on the same basis as members and employees of planning boards.
11	7(2). Amend this subsection to clarify the type and manner of presentation of information obtained pursuant to subsection (1), which are issued to the public in planning documents.	This submission raises a broad question of policy in respect to the confidentiality of assessment information. It is beyond the terms of reference of the Committee and should be examined further by the Ministries of Housing and Revenue.

12	**12 to 17, general.** Clearly define those planning board functions which are to be carried out in public and those which may be carried out in private.	This submission should be acted on. Currently *The Municipal Act* requires municipal councils and local boards, other than boards of police commission and school boards, to meet in public. Committees, including committees of the whole of municipal councils and likely of local boards, may meet in private. For clarity of understanding, *The Planning Act* should spell out the governing rules in respect of the holding of private meetings. It should authorize planning board committees, including committees of the whole, to meet in private provided that such meetings are in accordance with rules of procedure adopted by the board and approved by the relevant municipal council. All meetings of planning boards as such should continue to be required to be conducted in public. See also Chapter 5.
13	**12(1)(c).** Require that a planning board consult only with those local boards which in the opinion of planning board are affected by the planning issues and policies it proposes to consider.	This submission should be acted on. It is not presently clear whether the Act requires planning boards to consult with all local boards in preparing official plans or amendments thereto, whether or not such local boards are likely to be affected. The Act should be amended to make it clear that a planning board must consult only with those boards that it considers may be affected by the matters under consideration.
14	**17(1).** Amend to provide for notice to be given to affected persons of modifications which the Minister proposes to make to an official plan before him for his approval.	This submission should be acted on. If the concept of the statutory official plan is retained and a modification is proposed, the modification should be advertised in accordance with rules established by regulations made under the Act. If a request for referral to the Ontario Municipal Board is not received within say 14 days of the advertisement, the Minister should be free to modify the plan accordingly. If a request for referral is received, the Act should require that it be treated in the same way as a request for the reference of the official plan itself to the Ontario Municipal Board.
15	**17(3).** The period following which a right of appeal may be made from a council's refusal or neglect to make a decision on an application to amend an official plan, should be extended from 30 days to 60 days.	This submission should be acted upon, but the period should be extended to only 45 days. It often is not possible for a municipality to complete its evaluation of an application within 30 days. 45 days is a reasonable period of time having regard for the interests of the municipality, the applicant and affected members of the public. See also Submission 70.
16	**17(4).** Amend the Act to require the Ontario Municipal Board to hear an appeal under this subsection within 90 days.	It would be inappropriate to establish a time limit in the Act. Variety and circumstances from case to case make a fixed time period inappropriate.

17	**19(2).** Require that the Minister *shall* require a report from the planning board when an amendment or appeal of an official plan is initiated by a council.	The submission should not be acted upon. The Minister should be free to consult any person he desires. The language of the section gives the Minister this discretion. It is appropriate and should be retained.
18	**21(1).** Add that, as a condition of a sale, lease or disposal of land by a municipality, "public notice is given of such sale, lease or disposal".	This submission should not be acted on. There is no compelling need which would be met by requiring additional public notification. The public should have been notified when the official plan policy pursuant to which the land was acquired was before the planning board.
19	**22, 23, 24, general.** The word 'redevelopment' should be replaced by the term 'community improvement', which should be defined to include 'redevelopment'.	The submission should be acted on. Despite the present definition of 'redevelopment' in section 22(1)(a), in practice it has been often taken to suggest that demolition is contemplated and will take place. Notwithstanding that the submitted change in terminology is only semantic, it would serve to better express the purpose of section 22.
20	**22, general.** Amend to except from the definition of 'redevelopment' and thus from section 22, the planning, conservation, rehabilitation and improvement of a residential neighbourhood pursuant to the neighbourhood improvement provisions of *The National Housing Act*.	This submission should not be acted on. The same considerations that apply to redevelopment plans generally apply to the neighbourhood improvement program, which should continue to be undertaken pursuant to section 22.
21	**22(2).** Eliminate the requirement of first designating a redevelopment area before a municipal council may proceed under section 22.	This submission should not be acted on. Ministerial approval of a redevelopment area should take place at the outset of the redevelopment planning process, and prior to land acquisitions which take place in advance of the adoption and approval of the redevelopment plan.
22	**22(2).** Introduce a requirement that municipalities hold public hearings prior to enacting a by-law designating a redevelopment area.	This submission should be acted on. Since a redevelopment area designation by-law which is approved by the Minister allows a municipality to acquire land, the reasons for the designation of the redevelopment area should be brought to the attention of affected persons. They should have the right to be heard before the designation is made.
23	**22(3).** Delete the requirement that after a redevelopment plan has been approved the Minister approve land acquisitions, the holding of land and its preparation for redevelopment.	This submission should be acted on. The redevelopment plan should contain policies in respect of land acquisitions, etc. It must be approved by the Minister. This approval requirement should suffice to permit the provincial interest to be protected. The proposed amendment would improve efficiency without producing any unacceptable cost.

24	**22(5) & (7).** Amend to authorize the Minister on his own initiative, or on receipt of a request that he does not consider to be made in bad faith, frivolously, or only for the purpose of delay, to refer the whole or part of a redevelopment plan to the Ontario Municipal Board for hearing and report to him.	The submission should be acted on. The Minister should have the power to refer a valid objection which is lodged with him to the Ontario Municipal Board for a hearing and a report prior to making the final decision.
25	**22(6).** Amend to provide that a neighbourhood improvement program proposal cannot be rejected by the Minister after a municipality has amended its official plan to accommodate the particular proposal.	The submission should not be acted on. As a matter of principle neighbourhood improvement program proposals should be treated no differently than land use regulations. Approval of an official plan does not operate as an irrevocable forward commitment to enact and approve specific land use regulations and should not operate in this way with respect to specific improvement proposals.
26	**22(8).** Powers of a council under this subsection should be expanded to include the redevelopment of privately owned lands by the municipality.	No action should be taken on this submission. Redevelopment of private lands by a municipality is inconsistent with the concept of private ownership. Municipalities should continue to be restricted to developing land they own or in which they have a property interest.
27	**22(8).** Amend to delete the requirement of the Minister's approval for a council to improve land or to sell or lease buildings in a redevelopment area, in accordance with the redevelopment plan.	This submission should be acted on. The actions by the municipality which are outlined in the section will be for purposes set out in the redevelopment plan which has been approved by the Minister. It is unnecessary for him also to approve actions to implement the policies contained in the plan.
28	**22(9).** Amend to delete the requirement of the approval of the Minister to short term leasing of land or buildings for any purpose in a redevelopment area pending development of the redevelopment plan.	The submission should be acted on. The subsection limits such leases to terms not exceeding 3 years at any one time. There is no significant risk that policy alternatives that might be selected in the redevelopment plan will be pre-empted by the making of such leases. The Minister's approval of the redevelopment plan itself is sufficient to protect the provincial interest in this regard.
29	**23.** Expand to permit municipalities to enter into agreements with other levels of government for carrying out detailed studies for neighbourhood improvement program plans, for implementing neighbourhood improvement program plans and administering the residential rehabilitation assistance program.	The submission should be acted on. At present section 23 appears to authorize municipalities with the approval of the Minister to make intergovernmental agreements only for the purposes of carrying out studies relating to physical conditions. This is unnecessarily restrictive.

30	**29, general.** The status of judge's plans etc. prepared under *The Registry Act* and *The Land Titles Act* should be clarified.	This submission should be acted on. While the regulations under *The Registry Act* provide that judge's plans, among others, are to contain a caution that they are not plans of subdivision within the meaning of sections 29, 32 or 33 of *The Planning Act*, neither *The Registry Act* nor *The Planning Act* makes the point clear. Although the Supreme Court of Ontario has decided that a compiled plan is not a registered plan of subdivision within the meaning of *The Planning Act*, a different decision might be reached in respect of a judge's plan. There is a comparable problem under *The Land Titles Act*. That judge's plans etc. are not registered plans of subdivision within the meaning of section 29(2) of *The Planning Act* should be provided in the legislation.
31	**29, general.** Provide that conveyances which offend the Act and would be invalid otherwise are not invalid where a purchaser has taken reasonable steps to discover whether the vendor retains a prohibited interest in adjoining lands.	The submission should be acted on. Currently a statutory declaration establishing that the person making the conveyance or other transaction referred to in section 29(2) does not retain the fee or equity of redemption, etc., in abutting land, is required to be attached to the instrument for which registration is sought under *The Land Titles Act* and *The Registry Act*. Notwithstanding that a bona fide purchaser, has relied on it in completing the particular transaction, if the statutory declaration is perjurious, he will not obtain an indefeasible title to the land. A bona fide purchaser could be protected in respect of his title in such circumstances without significant problems being caused, as far as the municipal planning system is concerned. In addition certainty of title would be promoted. If the proposed amendment is enacted it should be made retrospective so as to apply to all transactions where the registered deed, transfer, mortgage, charge, etc. has appended to it a statutory declaration in the terms set out above.
32	**29(1a).** Clarify the meaning of "abuts such land on a horizontal plane only".	The meaning of the sub-section is unclear. It should be re-written to apply exclusively to sub-surface mineral rights where surface rights are not transferred.
33	**29(2).** Expand the list of transactions referred to in this sub-section by adding devises contained in wills, so as to require subdivision approval before they take effect.	This submission should not be acted on. A devise of land is not a prohibited transaction as defined in section 29(2) and therefore does not require subdivision approval. Public policy is that a testator is free, generally speaking, to dispose of his assets to whomever he wishes. In most situations, devises are neutral when measured against the objectives of the subdivision approval system. To apply subdivision control to devises generally and, thus, interfere with the freedom of disposition of testators, is not justified.

34	**29(2)(b) and 29(4)(a).** Amend these paragraphs to exclude from the exemption those transactions where the person making the agreement retains a leasehold interest in abutting land.	This submission should be acted on. It is not clear whether the transactions referred to in the submission are or are not exempt from subdivision control. Evaluated against the objectives of the subdivision approval system, they should not be exempted.
35	**29(2)(b) and 29(4)(a).** Clarify the case where the bed of a river or stream is vested in the Crown under *The Beds of Navigable Waters Act*.	This submission should not be acted on. Where the bed of a river is vested in the Crown and one person owns the fee or the equity of redemption, etc., in land on both banks of the river, his position and the community's is identical to that where the parcels of land in single ownership are separated by a public highway, street or lane. Such parcels do not abut. Disposal of either parcel in its entirety is neutral when evaluated against the objectives of the subdivision approval system.
36	**29(2)(c).** Exempt school boards from the need to obtain a consent when buying or selling land.	This submission should not be acted on. If the submission is accepted municipal planning interests protected by the subdivision approval system could be adversely affected. The municipality has a legitimate planning interest in the appropriateness of the location for a school site being acquired outside of a plan of subdivision. The same is the case where the whole or part of a school site shown on a registered plan of subdivision is to be disposed of by a school board. The municipal planning interests in these situations are best protected through the subdivision approval system.
37	**29(2)(c) and 29(4)(b).** Clarify whether or not federal and provincial crown corporations fall within this clause.	This submission should be acted on. Provincial legislation cannot affect Her Majesty in Right of Canada or an agency of Her Majesty. Further, since *The Planning Act* is not expressed to bind either Her Majesty in Right of Ontario or a Crown agency as defined in *The Crown Agency Act*, as a matter of law it does not bind Her Majesty in Right of Ontario. Sections 29(2)(c) and 29(4)(b), insofar as the reference to Her Majesty in Right of Canada and Ontario, are declarations of the constitution and the law. The meaning would be made clearer if these clauses expressly referred to Crown agencies as defined in *The Crown Agency Act*.

38	**29(2)(d).** Exempt transactions by which land, or any use of right in land, is acquired for the construction of electricity transmission lines by Ontario Hydro.	This submission should be acted on. The paragraph now exempts transactions where land etc. is acquired for the construction of a transmission line within the meaning of *The Ontario Energy Board Act*. A "transmission line" is defined by that Act to be a pipeline for the transmission of certain hydrocarbons but not lines for transmitting electricity. Evidently transmission lines are exempted on the theory that they are inter-municipal in significance. The same policy consideration applies to Ontario Hydro's electricity transmission lines and supports the submission.
39	**29(2)(e) and 29(4)(d).** Provide that both the parcel severed by the consent and the remnant parcel retained by the grantor may be transferred etc. without any further consent.	This submission should be acted on. As a matter of principle, both the approval and registration of a plan of subdivision and the granting of a consent to a particular transaction should produce similar legal consequences. Future transactions in respect of the whole of a lot on the plan, and the whole of the severed and remnant parcels, should be exempted from any further subdivision approval requirement. This is not the case now where the parcels come into single ownership and subsequently the common owner wishes to dispose of them in two parcels, the boundaries of which coincide with the original severed and remnant parcels. This causes uncertainty and delay and occasions significant financial cost in land transactions. The Act should provide that on registration of the consented-to instrument and a reference plan identifying the severed and remnant parcels, both are to be considered as lots on a registered plan of subdivision for the purposes of subdivision control. Additionally, municipalities should have a designating power in respect of such lots which is analogous to their power respecting lots on a plan of subdivision that has been registered for eight years or more.
40	**29(4).** Amend the section to provide that where the land comprises the whole of one lot on a registered plan of subdivision and part of an adjoining lot or block on such a plan, a transaction with respect to either of them, in any sequence, may be completed without subdivision approval.	This submission should be acted on. As the judicial decisions now stand, if the whole lot is disposed of first, the transaction is outside part-lot control and subdivision approval is not required. The result is the opposite if the part of the lot or block is disposed of first. This result is anomalous and should be avoided by the enactment of an amendment to the section in the terms proposed.

41	**29(4).** Part-lot control should apply to the lots within judge's plans etc. prepared pursuant to *The Registry Act* and *The Land Titles Act*. Such plans should be considered to be registered plans of subdivision for the purposes of section 29(4).	If universal part-lot control is retained, this submission should be acted on. It is doubtful whether a judge's plan as well as the other types of plans provided for in *The Land Titles Act* and *The Registry Act*, other than those prepared by the owner of the land, are registered plans of subdivision within the meaning of section 29(4) of *The Planning Act*. They should be deemed to be such for the purpose of part-lot control.
42	**29(6).** Amend the subsection so that consents lapse two years from the date of granting the consent rather than two years from the date of issuing the certificate.	The Act should be amended to make it clear that the time period should start to run on the date that the Ontario Municipal Board order or the decision of the committee of adjustment or land division committee is final and binding.
43	**29(7).** Amend the subsection to make it clear that failure to include in a contract of sale, as an express condition, that the contract is to be effective only if the provisions of section 29 are complied with, does not render the contract illegal and void.	The Act should be amended to provide that failure to include a section 29(7) condition in a contract will have the consequence that it not be specifically enforceable. Further, damages for loss of the bargain should not be recoverable where subdivision approval has not been granted before the date set for completion of the contract, where both parties have otherwise performed their obligations under the contract.
44	**29a, general.** Permit a municipality to eliminate checkerboard lots, which were created before universal subdivision control, with the result that the ownership would revert to the original land owners.	This submission should not be acted on. Retrospective invalidation of titles is wrong in principle.
45	**29a, general.** Amend to provide that simultaneous conveyances of abutting parcels of land created valid titles if made prior to the effective date of section 29(5a).	This submission should not be acted on. As interpreted by the Court, prior to the effective day of section 29(5a), section 29 did not prohibit simultaneous conveyances of abutting parcels of land to different persons. The same is true of the predecessor of section 29. The suggested amendment is redundant.
46	**29a(3).** Restrict the scope of the municipality's discretion under this subsection by defining the word "appropriate".	The Act should be amended to provide that a municipality acting under section 29a should have no greater power than an approving authority to impose conditions on a consent or plan of subdivision.
47	**32(4).** Delete the requirement that a Minister's order conform to the provisions of the official plan applying to the land affected by the order.	This submission should be acted on. The Minister should have power to make a section 32 order which in effect establishes an interim control. This may be impossible if there is in place an official plan which does not contemplate interim controls or which provides for uses of land considered by the Minister to be inappropriate at the time the section 32 order is made. See also Chapter 4 of the report.

48	**33, general.** Provide that draft plans of subdivision will not be considered for approval where they require municipal capital expenditure not budgeted for within two years.	This submission should not be acted on. Section 33(4)(h) already provides for the adequacy of utilities and municipal services to be taken into account. The proposed amendment would introduce additional rigidity into the subdivision approval process. This is not justified. See also Chapter 12.
49	**33, general.** Give municipalities power to approve small subdivisions (twelve lots or less) and define criteria for granting such approvals.	Chapter 4 proposes that municipalities should have authority to approve all plans of subdivision unless the Minister determines they should not be given such power in individual cases.
50	**33, general.** Provide that a new plan of subdivision is required when a municipality deems a registered plan of subdivision not to be registered only for the purposes of section 29(2).	No action should be taken on this submission. Section 29(3) authorizes a municipality to designate plans of subdivision or parts thereof that have been registered for eight years or more which are deemed not to be registered plans of subdivision for the purposes of subsection 2 of section 29. For all other purposes the registered plan of subdivision remains registered and in effect. As a practical matter, whether or not a new plan of subdivision will be required to be submitted for planning approval as a condition precedent to further transactions taking place in respect of the land, depends on the amount of land within the plan that has not been disposed of. The proposed amendment is not appropriate.
51	**33, general.** Introduce a staged system of registrations so that building lots can be brought on the market as services are financed and built.	No action should be taken on this submission. The staging of registration can best be handled through subdivision agreements. The legislation is now broad enough to authorize the making of such agreements.
52	**33(5).** Require payment of lot levies prior to the execution of the subdivision agreement.	Persons should not be required to make payments until the agreements authorizing such payments have been concluded.
53	**33(5).** Provide not only for conditions requiring public road dedications but also easements for municipal purposes.	The submission should be acted on. The subsection should be expanded to add easements for municipal purposes.
54	**33(5).** Require the Minister to impose those particular conditions that he now has a discretionary power to impose.	The submission should not be acted on. See Chapter 12.
55	**33(5).** Amend in order to ensure that the conclusion of a satisfactory financial arrangement for the purchase of school sites be a condition of draft plan approval or a requirement of an agreement.	The submission should not be acted on. See Chapter 12.

56	**33(6).** Authorize school boards to enter into agreements as a condition of draft approval.	This submission should not be acted on. In Chapter 12 the Committee recommends that dedication or required sales of sites for school purposes should not be authorized as a condition of approval of a draft plan of subdivision.
57	**33(6).** Provide that subdivision agreements may be cancelled by the municipality where the subdivider seriously fails to commence and continue construction of buildings within two years of the signing of the agreement.	This submission should not be acted on. It would significantly increase the discretionary powers of municipalities with respect to subdivisions, and could increase the costs of development without producing a commensurate benefit to the public.
58	**33(8).** Amend to permit municipalities to require cash in lieu to be paid prior to the execution of the subdivision agreement, without the approval of the Minister.	This submission should not be acted on. Levies and other cash payments should be the subject of an agreement prepared in accordance with ministerial regulation.
59	**33(8).** Amend the Act to authorize municipalities to secure cash payment in lieu of road widening dedications.	This submission should not be acted on. The Act authorizes municipalities to secure as a condition of subdivision approval the dedication of those road widenings the Minister considers necessary. The situation is not analogous to that of parkland, which can in certain circumstances be provided more appropriately outside the given subdivision plan, and for which payment in lieu of dedications are not necessary for the development of land being subdivided, they should not be required as a condition of subdivision approval, nor should their cash equivalent be secured. See also Chapter 12.
60	**34.** This section should be repealed.	This submission should be acted on. The consequences of non-compliance with section 29(2) and (4) should be specified in section 29(7).
61	**35, general.** Authorize employees of a municipality to enter into private property without the permission of the owner in order to determine if the provisions of the by-law are being violated.	This submission should not be acted on. The proposed power is an unwarranted infringement of private property rights.
62	**35, general.** Define "aggregate extraction" as a use of land for the purpose of section 35.	See Chapter 17.
63	**35, general.** Amend to describe by-laws passed under section 35 as "zoning by-laws".	This submission should be acted on. The term "zoning by-law" more accurately describes comprehensive by-laws enacted under this section than "restricted area" by-laws.

64	35(7). Amend to authorize municipalities to establish amortization periods under which the right to continue a non-conforming use, building or structure will terminate.	This submission should be studied further. Vested rights should not be taken away unless the municipality has adequately established the particular public interest which will be satisfied in doing so, an equitable basis for establishing amortization rules, and suitable procedures for ensuring that the persons affected are treated fairly.
65	35(7). Encourage municipalities to take an inventory of uses to be made non-conforming by a zoning by-law.	It is desirable that prior to enacting a zoning by-law municipalities should establish an inventory of the properties to be made non-conforming by that by-law, particularly if amortization of non-conforming uses is to be considered. See also Submission 88.
66	35(7). Provide that, after destruction of a non-conforming building or structure to a proportion of its value above grade, the building or structure may be rebuilt and used only in conformity with the zoning by-law.	This submission should be acted on. As the judicial decisions now stand it is not clear whether such a provision in a zoning by-law would be effective. It is a reasonable power for municipalities to have. The appropriate percentage of value to be used for this purpose should receive further study by the Ministry.
67	35(7). Clarify whether or not a municipality has the jurisdiction to regulate non-conforming uses. At present, a violation of a legal non-conforming use could not be prevented by a restraining order (as can a violation of a conforming use) since prevention may be regarded as an application of the by-law, whereas this subsection provides that a zoning by-law cannot prevent a use which is legally non-conforming.	This submission should not be acted upon. Section 35 does not permit a municipality to either regulate or prohibit a non-conforming building, structure or use in a zoning by-law. As a matter of principle, a municipality should not have such a power. Municipalities should continue to have power to regulate non-conforming buildings under other provisions of *The Planning Act* and other legislation including *The Municipal Act.*
68	35(12). Require the O.M.B. to hold a hearing within 30 or 60 days where an application is made for approval of a by-law.	It would be inappropriate to establish such a time limit in the Act for the same reasons as indicated in Submission 15.
69	35(20). Authorize a municipality to enact a by-law without O.M.B. approval, to permit vehicle parking on vacant land for a limited time period, whether or not it conforms to the official plan.	This submission should not be acted upon. There is no persuasive reason to support the proposed distinction between temporary and permanent parking provisions in respect to the requirement of conformity to an official plan.
70	35(22). The period during which council refuses or neglects to make a decision on an application to amend a zoning by-law following which a right of appeal to the Ontario Municipal Board may be heard should be extended from one month to two months.	This submission should be acted upon, but the period should be extended to 45 days. Evaluation of an application by a municipality cannot always be completed within one month. The extension of the period to 45 days is reasonable having regard for the interests of the municipality, the applicant and the affected public. See also Submission 15.

71	**35(7a) and (7b), general.** Permit a municipality to pass a by-law establishing classes of non-conforming uses. An owner who enjoys a legal non-conforming use would be free to move as a matter of right from one use to another within a class, but not between classes.	This submission should be acted on to give flexibility and save the unnecessary expense of going to the committee.
72	**35a, general.** Authorize municipalities to delegate full decisional authority under this section to a committee of council.	This submission should be acted on. Decisions on development review largely execute council policy. A council should have flexibility to delegate these decisions to a committee. See also Chapter 5.
73	**35a, general.** Provide that "development" includes making an addition to an existing building.	This submission should be acted on. The term "development" is not defined for the purposes of either section 35a or 35b. Clearly, the reasons which support the application of a by-law enacted under section 35a to new buildings apply equally to substantial additions to existing buildings.
74	**35a(2).** Amend to authorize municipalities to require owners to maintain walkways open to those legally entitled to use them during stipulated periods of time each day.	This submission should be acted on. Where, for example, a walkway is in fact a pedestrian street open to members of the public generally the municipality should have clear authority to require the walkway to be kept open for stipulated periods of time each day.
75	**36, general.** Authorize a property standards officer who is satisfied that a dwelling violates the standards imposed by a section 36 by-law in a manner that constitutes an urgent hazard to the health or safety of any person, to require that the violation be corrected immediately and to take whatever measures he considers to be necessary. There should be requirements for notice to owner and occupants and provision for subsequent confirmation, modification or rejection of the action by a property standards committee.	This submission should be acted on. Immediate corrective action where urgent hazards to health or safety are caused by violation of the standards imposed by a section 36 by-law, is not possible under the section as presently worded.
76	**36(1)(f).** Amend to incorporate reference to "maintenance". The clause would then read: "repair" includes the provision of such facilities, the making of additions or alterations, *the maintenance* or the taking of such action as may be required so that the property conforms *and is maintained* to the standards established in a by-law passed under this section.	This submission should not be acted on. The concepts of "repair" and "maintenance" are distinct. Subsection (3) authorizes municipalities to enact minimum standards of maintenance and occupancy by-laws, embodies both the concept of "repair" and the concept of "maintenance".

77	**36(3).** Add an extra paragraph (f) to read: "for appointing a property standards officer and persons acting under his authority, as required to enforce the by-law".	This submission should be acted on. The officer is appointed pursuant to the general powers of municipalities provided by *The Municipal Act*. Since officers exercise important enforcement powers, the section should provide for their appointment by by-law.
78	**36(10).** Clarify to provide that the municipal clerk must cause the certificates to be registered in the proper registry and land titles offices, rather than personally register them himself.	This submission should be acted on. The subsection is open to the interpretation now that the clerk must register the certificate personally.
79	**36(12).** Amend to permit not only school teachers but also all other employees of school boards to serve on property standards committees.	This submission should be acted on. There is no reason to distinguish between school teachers and other school board employees.
80	**36(21).** Expand to provide that the costs of the work incurred by the municipality, may be a charge against the land and recoverable in the same manner as taxes.	This submission is reasonable and should be acted on.
81	**36(21).** Amend by authorizing a municipality to direct the occupant of a dwelling unit or part of a property to pay his rent to the property standards officer to be deposited with the municipal treasurer, who shall apply the rent to reduce the amount owed to the municipality for repairing the property where the owner fails to comply with an order.	This submission should not be acted on. Where because of particular circumstances, a municipality can demonstrate to the Legislature that it requires this power it should be granted by private legislation. This extraordinary power should not be delegated by general legislation to all municipalities.
82	**36(22).** Expand to enable the municipality to issue and charge for a certificate of compliance both to the owner and other persons who may apply for a certificate including the purchasers of particular property.	This submission should be acted on. Certificates of compliance should be available to other persons than the owner of the property. There should be authority to charge for certificates. The maximum fee should be fixed by regulation.
83	**37(2).** Amend to provide the provision that when a loan goes into default, the unpaid balance of the loan and the accrued interest can be added to the municipal taxes and collected as such.	This submission should be acted on. It would expand a municipality's power to recover loans and is supported by precedent.
84	**41, general.** Amend section to provide that *The Statutory Powers Procedure Act, 1971* does not apply to committee proceedings.	This submission should not be acted on. There is no basis on which the practices and powers of a committee should be distinguished from other tribunals exercising a statutory power of decision.

85	**42, general.** Require that all municipalities within the geographic area of a committee's jurisdiction file with the committee all planning documents (official plans, by-laws, etc.) in force.	This submission should be acted on. The Minister should have the power to make regulations requiring that municipalities lodge documents described in the regulations with the appropriate committees.
86	**42, general.** Permit decision to be given by an alternative to "mail" as specified in 42(11) and (13).	This submission should be acted on for practical reasons.
87	**42(1).** Authorize a committee to grant a minor variance when an outdated official plan exists, notwithstanding its intent and purpose are not maintained.	This submission should not be acted on. Since the official plan is the municipality's planning document, amendments to its policy should be made by council. An appointed committee should not have power to disregard the municipality's official plan when considering a minor variance from a zoning by-law.
88	**42(2).** Place the burden of establishing a use as legally non-conforming on the owner and require him to register his use within 3 months of the passing of the by-law. Disputes could be subject to appeal to the committee of adjustment.	The submission should not be acted on. It would place the onus for interpreting a zoning by-law on the owner, rather than the municipality. This is wrong in principle.
89	**42(2).** Add a new subsection to read "where a zoning boundary does not exactly coincide or is in doubt and where, in the opinion of the committee, there is not sufficient reason to warrant an amendment to the by-law, the committee may adjust or establish the zoning boundary".	This submission should not be acted on. Definitions of lots and identification of zone or district boundaries should only be changed by decision of the municipal council. They are critical elements of zoning by-laws.
90	**42(2)(a).** Reword this subsection to read "where any land, building or structure, on the day the by-law was passed was *lawfully* used. . ." so that it corresponds to the wording of 35(7)(a).	This submission should be acted on. The language of the subsection should parallel that of section 35(7)(a).
91	**42(2)(a)(i).** Define what constitutes an "enlargement or extension" for the purposes of this subsection.	This submission should not be acted on. The only alternative to the use of the words in question would be to employ a quantitative qualification in the legislation. This would be arbitrary and inappropriate.
92	**42(3).** Amend to limit the committee's power to grant consents to those situations where the committee is of the opinion that a plan of subdivision of the land described in the application is not necessary for the proper and orderly development of the adjacent area in which it is located rather than the municipality.	See Chapter 13.

93	42(3). Require that the owner establish to the committee's satisfaction that the transactions for which the consent is sought will add to the proper and orderly development of the municipality.	This submission should not be acted on. The burden it would impose would be impossible to discharge in many circumstances. It would also broaden the discretion of the committee unduly.
94	42(4). The committee should be required to give notice of an application in such manner and to such persons as are prescribed by the Minister in rules of procedure setting out all the affected persons to whom notice must be given.	This submission should be acted on. See Chapter 9.
95	42(4). Extend the time limit within which a hearing on an application to a committee must be held to 60 days (but more preferably 80 days).	This submission should be acted on, but the subsection should be amended to increase the time limit for a hearing to 45 days. This will provide a tight but workable schedule for necessary circulations to be completed.
96	42(5). Notification of a consent application in rural areas should be required to be given to assessed owners of land within 2,000 feet.	See Chapter 9.
97	42(5). Reword this subsection to read "the committee, before hearing an application, shall give notice *in accordance with regulations established by the Minister under section 45* and in such manner and for such reasons as the committee considers proper".	See Chapter 9.
98	42(7). Add "pending submission or acquisition of additional evidence required by the committee, or to provide time for any conditions imposed to be met pursuant to subsection 29(12)" to the end of this subsection.	This submission should not be acted on. As presently worded the subsection is adequate.
99	42(9). Require that committee decisions be reached in public.	This submission should not be acted on. Currently, the subsection provides for the Minister, the applicant and persons who appeared at the hearings and filed a request, to be sent a copy of the decision. The decision must set out the committee's reasons and be signed by the concurring members. These are sufficient safeguards.
100	42(9). Provide that, in setting out the reasons for its decision, a committee shall summarize the evidence and arguments advanced by the applicant and any other parties, its findings of fact, and its opinion on the merits of the applications.	The submission should not be acted on. The committee must set out reasons for its decision. Many committees would find it useful to do what the submission proposes. However, it would be unnecessarily cumbersome to require this by statute in all cases.

101	**42(11).** Provide that a copy of the decision be mailed or otherwise delivered to the clerk of the municipality in which the land is situated.	This submission should be acted on. Formal notification should be required because in many municipalities consents will be granted by land division committees which may hold hearings and have administrative offices outside the municipality in which the land is located.
102	**42(13).** Define a "person" to include an unincorporated ratepayers association.	See Chapter 9.
103	**42(13a).** Require the appellant to specify the reasons for appeal and authorize the Ontario Municipal Board to dismiss the appeal on a summary application where it considers that the notice of appeal does not disclose a reasonable basis for the appeal.	See Chapter 10.
104	**42(13a).** Delete the requirement that the secretary-treasurer forward to the Ontario Municipal Board all papers and documents filed with the committee relating to the matter appealed.	This submission should not be acted on. The Board should be in possession of all relevant documents relating to the matter appealed in order that the hearing of an appeal may be conducted satisfactorily and expeditiously. See Chapter 10.
105	**42(14).** Provide that the secretary-treasurer, when he is also an employee of the municipality, not be required to file a certified copy of a decision with the clerk of the municipality.	This submission should not be acted on. Copies of the decisions should be lodged with the municipal clerk so that they are freely available for public inspection.
106	**42(18).** Require the Ontario Municipal Board to set forth in its order the reasons for granting or refusing an appeal.	This submission should not be acted on. The present requirement for the Ontario Municipal Board to give reasons for its decision if requested to do so by persons appearing at the hearing is sufficient.
107	**42(20).** Clarify the manner of issuing certificates and the role of the secretary-treasurer when the consent decision has been made by the Ontario Municipal Board on appeal.	This submission should be acted on.
108	**42(16) and 42(20).** Provide that the decision of the Ontario Municipal Board when it becomes final and binding stands in the place of the decision of the committee, and that the secretary-treasurer shall give a certificate to the applicant stating that the consent has been given.	This submission should be acted on. The section now does not make it clear in the case of an appeal respecting a consent, by whom and when the necessary certificate is to be given.

109	**42(18) and 42(19).** Subsection (18) should be amended to require the secretary of the Ontario Municipal Board to send a copy of its order on appeal to the clerk of the municipality. Subsection (19) should be repealed.	This submission concerning subsection (18) should not be acted on as it is administratively cumbersome. Subsection (19) is cumbersome and should be repealed.

appendix

APPENDIX A

terms of reference of the review

1) Examination of the nature of planning in Ontario:
   a) Goals and objectives of municipal and provincial planning.
   b) Role of government in planning; relationship of planning to provincial and municipal responsibilities.
   c) Results and products of planning; social, economic and environmental consequences.
   d) Alternative concepts of the nature of planning.

2) Examination of the planning system and planning process in Ontario: legislative framework, regulatory mechanisms, planning structure, planning procedures, and public involvement in planning.

APPENDIX B

summary of background studies

PREPARED FOR THE PLANNING ACT REVIEW COMMITTEE

BACKGROUND PAPER NO. 1:

planning issues – the public consultation program

(Review Staff) pp. 229 plus Appendices

This study documents the Review's public consultation program designed to secure the opinions of the variety of interest groups and organizations involved in the municipal planning process. The program involved inviting written briefs and holding a series of province-wide meetings with interest groups comprising developers and realtors, planners, engineers, architects, surveyors and lawyers, rural interest groups, elected and appointed representatives of municipal bodies, citizen groups and other special interest groups.

The report classifies and summarizes the full range of concerns and opinions expressed to the review through the above process and is organized in the following categories:

- Purpose and objectives of the municipal planning system
- Legislative base of municipal planning
- Instruments and practices
- Municipal organization for planning
- Provincial activities affecting municipalities
- Special issues
- Social, environmental and economic content of municipal planning
- Public participation in municipal planning.

The report serves as a reference to those seeking an understanding of the range of opinions held by interest groups generally, but for more detailed analysis, the briefs and submissions made to the review are available for reference in the Ministry of Housing.

BACKGROUND PAPER NO. 2:

the operation of municipal planning in ontario

(Llewelyn Davies Weeks Canada Ltd. and Review Staff) pp. 55

This study draws conclusions about the current municipal planning situation in Ontario. It deals with the variety of planning activities, the products of these activities, and the organization necessary for them to take place.

The discussion is based on two sources of information. The first is a summary of interviews conducted in representative areas in the province. In each area, persons directly engaged in the planning process at a responsible level were interviewed — planning directors, members of planning boards or committees, council members, other heads of municipal departments such as engineers and legal officers, and members of committees of adjustment and land division committees. The other source of information was the material on local and metropolitan planning prepared for the Royal Commission on Metropolitan Toronto.

The report presents the way in which the instruments provided for in the legislation are used and an attempt is made to establish certain criteria against which the results of municipal planning can be assessed. This includes both a review of the purpose of planning, and an appreciation of the range of planning objectives pursued. The problems and deficiencies of municipal planning as perceived by planners are summarized. The report assesses the effectiveness of municipal planning in relation to planning purposes and objectives, and states that the most significant problems of the system are political, administrative and technical — rather than legislative.

Also included are responses to the consultant's study which the Committee requested from a number of professional planners and lawyers.

BACKGROUND PAPER NO. 3:

municipal planning and the natural environment

(Reg Lang and Audrey Armour) pp. 86

The first part of this report describes the natural environment component in municipal plans, and then analyzes the planners' perceptions of "the problems", the solutions being attempted or contemplated and the gaps that exist. Next it attempts to determine how the municipal planning system might be improved from the standpoint of the natural environment. The report concludes by taking a closer look at the identified inadequacies of municipal plans and formulates a concept of planning and municipal management that is more sensitive to environmental considerations.

With the exception of regional municipalities, official plans are weak in their treatment of natural environment concerns and are generally limited to natural hazards, pollution and aesthetics. Municipalities also appear to pass much of their responsibility in the environmental area to the conservation authorities whose mandate is limited.

Municipal planners demonstrate considerably wider, stronger and different environmental concerns from those found in official plans. Planners cite inadequate municipal powers and resources, jurisdictional conflicts, lack of a provincial-regional planning framework and provincial insensitivity to local situations as the primary roadblocks to an environmental orientation of municipal planning.

The report proposes that environmental assessment should be integrated into municipal planning with strong municipal control.

The consultants also recommend that the Province should

prescribe provisions related to the natural environment to be included in official plans;

publish environmental guidelines;

initiate and support the establishment of an environmental data base at the municipal level;

bring forth legislation on the identification and management of environmental protection areas.

BACKGROUND PAPER NO. 4:

citizen participation in the preparation of municipal plans

(John Bousfield Associates) pp. 49

This study explores the role of citizens in the preparation of municipal plans. The objectives and methods of citizen participation are analyzed, and the influence of some specific programs on the content and preparation of various types of plans is assessed. The study also identifies ways in which public and private resources can best be used to involve the public and accommodate their concerns in municipal plans, and provides an understanding of citizen participation in civic affairs over the past decade. From this analysis a number of conclusions are drawn concerning the legislation affecting citizen involvement in the municipal plan-making process.

The study was based upon a series of interviews and discussions held with planning directors and senior planning staff in 11 municipalities, selected to ensure that various levels of plan-making activities were covered. The perspective is therefore based on the observations of professional planners rather than politicians or citizens themselves.

More specifically, the report discusses the methods adopted and information sought in conducting the case studies and explains the legislative base on which the participation programs were carried out. The findings of the case studies are explained and analyzed, and conclusions are drawn which could be useful in the development of other citizen participation programs. A summary outlines the shortcomings of the programs studied. Essentially, the consultants conclude that it is not the provisions of *The Planning Act* which determine the success or failure of citizen participation programs, but rather the way the programs are designed and implemented.

BACKGROUND PAPER NO. 5:

planning for small communities

(Gerald Hodge) pp. 17

This case study examines six small, generally rural, municipalities in the Kingston area in order to determine how they differ in terms of development and planning activities compared to larger urbanized communities. The study

was based on a detailed examination of planning board or council minutes over a two year period and by conducting interviews held with planning directors having responsibility in the study areas.

On the basis of this information, the current planning activity was then analyzed and differences identified with regard to 1) the context of growth; 2) the range of development; 3) the pace of development; and 4) available planning resources. The role of *The Planning Act* was also assessed drawing the conclusion that it does not adequately assist small communities.

The report suggests a number of modifications to *The Planning Act* in the key areas of official plans; agricultural land, severances and public notification. In addition, it is proposed that planning administration also be improved to promote a higher quality of planning practice. This would necessitate improvements in technical assistance; environment assessment; obligations of senior governments; community participation and local autonomy.

Legislative provisions for planning in restructured municipalities.

	PLANNING: REGIONAL LEVEL									PLANNING: LOCAL LEVEL					
	Established	*Planning Area*	*Organization*	*Duties Plan Preparation*	*Plan Deadline*	*Effect of Plan*	*Zoning Powers*	*Subdivision powers*	*Other powers provisions*	*Planning Area*	*Organization*	*Duties and Powers*	*Committees of adjustment*	*Land division committee*	*Delegation*
Standard Provision ●		**Region defined as joint Planning Area**	**May appoint planning committees and staff. Reg. Council is Planning Board**	**Same as Section 12 of The Planning Act**	**Adopt and submit plan by specified date**	**When plan approved, every local by-law plan may be brought into conformity. No new and plan to be adopted which does not conform**	**May zone land within 150' of regional road. Prevails over local by-law**	**May enter into agreements with area municipalities or persons on subdivision plan**	**With approval of Minister, may enter into agreements with any government or agency for carrying out of studies relating to Planning Area**	**Subsidiary planning area**	**Municipal council is planning board. May appoint planning committees and staff**	**All duties and powers of planning board under the Planning Act**	**Shall appoint C. of A. for purpose of granting variances only**	**Shall appoint regional land division committee to grant consents**	
Metro Toronto	January 1954	●	Standard after 1974	Standard after 1974	No date specified	●	●	●	Standard – have all powers under Housing and Development Act and other Acts relating to provision/improvement of housing	●	Planning Boards retained	●	No provision but C.'s of A. set up with authority to grant variances and consents	No provision	
Ottawa–Carleton	January 1969	●	●	●	Standard – but not required to forward to Minister	●	●	●	●	●	Planning Boards retained	●	Some C.'s of A. have variance and consent powers, others only for variances	L.D.C. for areas where C.'s of A. have no jurisdiction	
Niagara	January 1970	●	●	●	December 31, 1973	●	●	●	●	●	●	●	Standard – consent granting powers removed in 1974	Established 1974. Must seek opinion of area municipality	
York	January 1971	●	●	●	December 31, 1974	●	●	●	●	●	Standard, but Sections 3, 4, 6, 8, 9 and 10 of Planning Act do not apply	●	Standard – consent granting powers removed in 1974	Established 1974. Must seek opinion of area municipality	
District Muskoka	January 1971	71–74 Standard 75 Single P.A. for O.P.'s	Standard – may appoint advisory committee	Standard – must consult with area municipalities before adopting	December 31, 1974	Applies only to by-laws	●	●	●	●	Standard – may appoint advisory planning committee	Only have power with respect to Sections 35, 35a, 35b and 38	●	No provision, but L.D.C. established 1971	
Waterloo	January 1973	●	●	●	December 31, 1976	●	●	●	●	●	●	●	●	●	
Sudbury	January 1973	Single P.A.	Standard – may appoint advisory committee	No provision, but powers implied in Act	December 31, 1975	●	Region has responsibility for all zoning	No provision	No special provisions. Regional Committee of Adjustment, for variances and consents	None	None	None	None (Regional C. of A.)	None (Regional C. of A.)	
Peel	October 1973	●	●	●	December 31, 1976	●	●	●	●	●	●	●	●	●	
Halton	October 1973	●	●	●	December 31, 1976	●	●	●	●	●	●	●	●	●	
Hamilton–Wentworth	October 1973	●	●	●	December 31, 1976	●	●	●	●	●	●	●	●	●	
Durham	October 1973	Single P.A.	●	Standard – may delegate to local municipality	December 31, 1976	Applies only to by-laws	●	●	Standard – can adopt, amend district plan and forward to Minister or can reject plan	Area municipality may be designated by Region as District Planning Area	Standard following designation by Region	Upon designation by R.C. may perform such duties as referred to it and shall prepare District Plan and forward to R.C. for approval	●	●	
Haldimand Norfolk	April 1974	Single P.A.	●	No provision, but powers implied in Act	December 31, 1976	Applies only to by-laws	All zoning powers until regional plan approved, then may delegate to area municipalities	●	Standard – regional C. of A. can adopt, amend district plan and forward to Minister or can reject plan	Following approval of Regional O.P., area municipalities may be designated by Region as District Planning Area	Standard following designation by Region	Upon designation by R.C. may perform such duties as referred to it and shall prepare District Plan and forward to R.C. for approval	None (Regional C. of A.)	●	Region may delegate to area municipality right to appoint C. of A. to grant variances
Oxford County	January 1975	Single P.A.	County council is planning board. May appoint advisory committee as deems necessary	No provision, but powers implied in Act	December 31, 1978	No provision	County has all zoning powers	All subdivision powers at county level	County by-law under S. 35, 36, 38 take precedence over local by-law. County Council may be or may constitute or appoint an L.D.C. All existing O.P.'s deemed to be O.P.'s of County	None	Area council for limited powers only. County has allowed area municipalities to appoint planning committees	May exercise powers under sections 35, 36 and 38 of Planning Act	Area council is C. of A.	County planning committee and lay members is L.D.C.	County council may delegate to area municipality powers in respect of subdivision agreements